

Colorado Water Legislation Alert

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Bill Delaying Winter Replacement of Well Depletions Introduced in Senate

Senate Bill 136, introduced on February 1, would authorize the division engineer to temporarily delay or cancel the replacement of well depletions during the winter non-irrigating season. Such replacements, otherwise required by a decreed plan for augmentation for the applicant's well, might be delayed or cancelled if, in the professional judgment of the division engineer:

- All downstream senior reservoirs would be likely to fill even in the absence or delay of such depletion replacements; and
- The applicant well owner demonstrates the ability to deliver replacement water to downstream reservoirs in order to prevent injury.

The lead sponsors of SB-136 are Senator Brandon Shaffer and Representative Mary Hodge. Notably, the bill is similar to a proposal considered by the 2007 South Platte Task Force, but would extend much broader relief to junior well operators than that which was discussed and rejected by the Task Force. While the Task Force proposal to allow "prepayment" of winter depletions was roundly rejected by a 20-3 vote, SB-136 would go further by allowing the replacement of such depletions to not only be delayed, but in the judgment of the division engineer to even be cancelled outright.

While minimizing or eliminating winter replacement requirements is just one of several proposals being advanced to alleviate the replacement burdens placed upon junior well operators, the policy embodied in SB-136 faces a number of potential obstacles. From an engineering standpoint, it is very difficult to accurately predict depletions and the net impact on downstream flows that might result if such depletions are not timely replaced. Moreover, even if an applicant has demonstrated a sufficient replacement supply, river conditions or other contingencies might prevent the delivery of the delayed replacement supply by the end of the irrigating season, thus injuring senior vested rights. In addition, the Water Court in Water Division No. 1 has already ruled that a plan such as that contemplated by SB-136 is unworkable, rejecting a similar proposal in case no. 03CW99. These and other considerations will be the focus of testimony when SB-136 comes before the Senate Agriculture committee on Thursday, February 21.

Water Bills Introduced in 2008 General Assembly

Bill #	Short Title	Sponsors	Comment
SB-13	<p>Reallocation of funds in the Operational Account of the Severance Tax Trust Fund.</p> <p>Senate Ag amended and referred to Appropriations Jan. 31</p>	Sen. Schwartz, Rep. Fischer	<p>Authorizes the allocation of up to 5% of the operational account away from the Oil & Gas Comm'n and the Div. of Reclamation, and to the Div. of Wildlife and Parks & Rec., without mandating spending in new areas.</p> <p><i>Water Congress Monitoring</i></p>
SB-28	<p>Assignment of State's rights in Bonny Reservoir to CWCB, to be used to reduce evaporative losses.</p> <p>Calendared for Senate Ag Feb. 14</p>	Sen. Brophy, Rep. C. Gardner	<p>Controversial – Intent of sponsor unclear, but appears designed to allow draining of Bonny Reservoir to eliminate evaporation and seepage losses that are allocated to Colorado as consumptive use under the Republican River Compact. The bill implicates a complex web of issues that include compact compliance, declining aquifer levels, depletion of surface flows by well pumping, and large-scale augmentation projects.</p> <p><i>Water Congress Monitoring</i></p>
SB-36	<p>Conditions CWCB allocation of severance tax trust fund account upon applicant's adoption of a water conservation plan.</p> <p><u>Passed</u> third reading in Senate Jan. 28, with amendments</p>	Sen. Isgar, Rep. Curry	<p>Allows CWCB to condition loans or grants from the water supply reserve account of the severance tax trust fund, and specifies that repayments of principal and interest are credited to the account.</p> <p><i>Water Congress <u>Supports</u></i></p>
SB-53	<p>Amends statutory definition of "designated ground water."</p> <p>Calendared for Senate Ag Feb. 14</p>	Sen. Brophy	<p>Controversial – Intent of sponsor not clear but appears to be to assist isolated well operators; bill would expand statutory definition of designated ground water to include that pumped from wells that takes more than 100 years to travel to a stream.</p> <p><i>Water Congress <u>Opposes</u></i></p>

Bill #	Short Title	Sponsors	Comment
SB-84	Imposes limits on the development of the former Lowry Range. Calendared for Senate Health & Human Services Feb. 13	Sen. Hagedorn, Rep. Carroll	Prohibits development of Lowry land until all environmental remedial decision are complied with or the State receives money from responsible parties sufficient to comply with such decisions. Requires real estate contract disclosure stating that unexploded ordnance may be present and that the quality of potable water may be unreliable. <i>Water Congress <u>Opposes</u></i>
SB-119	Provides limited exemption for water collected from residential rooftops. Calendared for Senate Ag Feb. 14	Sen. Romer	Allows use of cisterns for collection of water from residential rooftops, for household, fire protection, livestock watering, and irrigation uses up to 1 acre. Users may be required to develop augmentation plans. <i>Water Congress Monitoring, Drafting Amendments</i>
SB-136	Authorizes delay or cancellation of replacement of well depletions during non-irrigating season. Calendared for Senate Ag Feb. 21	Sen. Shaffer, Rep. Hodge	For augmentation plans that require replacement of well depletions during the (winter) non-irrigating season, the well owner may apply and the division engineer may allow the delay or cancellation of those requirements if it is likely that all downstream reservoirs will fill even without winter-time augmentation and the well owner has the ability to make deliveries downstream to prevent injury. <i>Water Congress Monitoring</i>
HB-1014	Small capacity well ownership reporting requirement. <u>Passed</u> House Jan. 23, introduced & assigned to Senate Ag Jan. 28	Rep. Looper, Sen. Gordon	Requires residential home buyers to report change in ownership to the Div. of Water Resources, and directs the real estate commission to promulgate rules to reflect the requirement in appropriate form contracts. <i>Water Congress <u>Supports</u></i>

Bill #	Short Title	Sponsors	Comment
HB-1030	Exempts certain augmentation plans from replacing pre-1974 well pumping depletions in Water Div. No. 1. Passed House Feb. 5, introduced & assigned to Senate Ag Jan. 11	Rep. Hodge, Sen. Brophy	Controversial – Originally recommended by the South Platte River Task Force, the bill provides that "aug plans" hereafter applied for or amended shall not require replacement of depletion caused by pumping that occurred prior to March 15, 1974. Controversy focuses on the policy of exemption itself, as well as confusion over the intent of the Task Force with respect to whether the exemption should extend to plans applied for, amended in the future, and/or already adjudicated. <i>Water Congress Monitoring</i>
HB-1044	Facilitation of the use of excess water augmentation credits. Lost with amendments on second reading in House Feb. 4	Rep. Hodge	Allows excess credits to be loaned for use in another decreed augmentation plan or substitute water supply plan to replace current-year depletions caused by prior pumping. <i>Water Congress Monitoring</i>
HB-1141	Requires real estate developers to demonstrate to local land-use permitting authorities a "sufficient and sustainable" water supply to serve peak daily, monthly, and annual water supply requirements. Calendared for House Local Govt. Feb. 5, no action taken	Rep. Curry, Sen. Bacon	Applies to developments larger than 50 single-family equivalents. The developer must file a water demand report completed by a PE, and the local government must obtain (i) a letter from the State Engineer commenting on the PE's report, and (ii) a letter from the developer's water supplier summarizing the supplier's water portfolio. As drafted, the bill defines "sufficient and sustainable" essentially as "sufficient," leaving open questions as to just how draconian these requirements may be. <i>Water Congress Monitoring, Subcommittee Formed</i>
HB-1148	Statutory modification of elements of adverse possession claim against real property. Passed House Judiciary with	Rep. Witwer, Sen. Tupa	Bill drafted in response to high-profile 2007 adverse possession case in Boulder. As drafted, the bill does not sufficiently protect statutory recognition of ditch and other easements that may be

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	amendments Feb. 6, Second reading laid over in House Feb. 12		compromised by the broad language of the bill. <i>Water Congress has drafted proposed amended language</i>
HB-1222	Expands definition of renewable energy to include certain types of hydroelectricity Introduced, assigned to House Trans. & Energy Jan. 30	Rep. McNulty, Sen. Harvey	Amends renewable energy standards statute to define "low-impact hydroelectricity" as including pumped hydroelectricity, which has been certified by the Governor's energy office to minimize and mitigate wildlife impacts and to protect instream flows and water quality. <i>Water Congress Supports</i>
HB-1227	Continues the PUC through 2019; various amendments to PUC statute. Introduced, assigned to House Trans. & Energy Jan. 30	Rep. Madden, Sen. Tapia	Comprehensive amendments to the Public Utilities Commission statute, including a provision to include investor-owned water and sewer companies in the definition of public utility subject to PUC oversight. <i>Water Congress Monitoring</i>
HB-1241	Rename the Colorado Watershed Protection Fund the Colorado Healthy Rivers Fund. Introduced, assigned to House Finance Jan. 30	Rep. Scanlan, Sen. Schwartz	Amends the voluntary contribution designation identified on the Colorado individual income tax return form to rename the designated fund. <i>Water Congress Supports</i>
HB-1280	Protects historical use of water rights leased to CWCB for instream flow purposes. Introduced, assigned to House Ag Jan. 31	Rep. Fischer, Sen. Schwartz	Provides that any period of time in which a water right is loaned or leased to the CWCB will not count as a period of non-use in any subsequent change proceeding in an abandonment proceeding. Change applicant may not claim historic consumptive use for any period in which water was available for diversion solely as the result of an instream flow agreement. <i>Water Congress Monitoring, Subcommittee Formed</i>

Bill #	Short Title	Sponsors	Comment
HB-1330	Amends statute that governs election of water conservancy district boards of directors. Introduced, assigned to House Ag Feb. 5	Rep. Weissmann, Sen. Gordon	Requires all water conservancy district board members be elected, and removes the requirement that directors be knowledgeable in water matters or own real property located in the district. <i>Water Congress <u>Opposes</u></i>

This document is intended to provide you with general information about issues related to legislative updates pertaining to water-related legislation in the State of Colorado. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact one of the attorneys listed below or your regular Brownstein Hyatt Farber Schreck, LLP, attorney. This communication may be considered advertising in some jurisdictions.

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