



SOUTHWESTERN WATER CONSERVATION DISTRICT

2020 State Legislative Update: February 3, 2020

Below is a summary of 2020 water-related legislation under consideration by the Colorado General Assembly. These summaries apply to the bills as introduced and are pulled directly from the bill text [online](#).

Click on the bill number to view the most recent bill language and other information.

Bills introduced since the last SWCD board teleconference (January 28th) are highlighted in blue.

The Colorado Water Congress (CWC) State Affairs Committee met on February 3rd. **Positions taken on bills since the last SWCD board teleconference (January 28th) are in red text for CWC and green text for SWCD.**

SB20-008 Enhance Penalties Water Quality Criminal Violations

SWCD Position: Discussion

CWC Position: **Action postponed until 2/10.**

Sponsors: Senate (Winter), House (Jackson/Hooton)

Committee of Reference: Agriculture & Natural Resources

Title: Concerning the enhancement of penalties for criminal violations of water quality laws.

Summary: Current law specifies that a person who commits criminal pollution of state waters that is committed:

- With criminal negligence or recklessly is subject to a maximum daily fine of \$12,500; and
- Knowingly or intentionally is subject to a maximum daily fine of \$25,000.

Section 1 of the bill makes a:

- Criminally negligent or reckless violation a **misdemeanor** and **increases the penalty to \$25,000, imprisonment of up to one year, or both;** and
- **Knowing or intentional violation a class 5 felony and increases the penalty to \$50,000, imprisonment of up to 3 years, or both.**

Current law specifies that a person who knowingly makes any false representation in a required record or who knowingly renders inaccurate any required water quality monitoring device or method is guilty of a misdemeanor and is subject to a fine of not more than \$10,000, imprisonment in the county jail for not more than 6 months, or both.

Section 2 makes these violations a **class 5 felony** and specifies that if 2 separate offenses occur in 2 separate occurrences during a period of 2 years, the maximum fine and imprisonment for the second offense are double the default amounts.

Comments:

SB20-153 Water Resource Financing Enterprise (NEW SINCE LAST SWCD REPORT)

SWCD Position: Discussion

CWC Position: Discussion

Sponsors: Senate (Coram)

Committee of Reference: Agriculture & Natural Resources
Title: Concerning the creation of an enterprise that is exempt from the requirements of section 20 of article X of the state constitution to administer a fee-based water resources financing program.

Summary: The bill **creates the water resources financing enterprise** (enterprise). The board of the enterprise (board) consists of the board of directors of the Colorado water resources and power development authority and the Colorado water conservation board. The enterprise will provide financing to "water providers", defined to include drinking water suppliers, wastewater treatment suppliers, and raw water suppliers. Raw water suppliers are limited to those that provide raw water for treatment and use as drinking water.

Customers of drinking water suppliers will pay a fee to the supplier, who will transmit it to the enterprise to be used for the financing. The fee is 25 cents per 1,000 gallons of drinking water delivered per month to each metered connection in a drinking water supplier's public water system, collected after the first 4,000 gallons of drinking water delivered per month to an individual metered connection. The board may adjust the fee based on inflation and equity concerns for large nonresidential customers and customers who pay tiered rates that start higher than 4,000 gallons per month.

The enterprise can provide financing for grants, loans, and in-kind technical assistance in arranging third-party financing. In determining whether to provide financing, the board shall consider the following factors:

- A water provider's ability to pay, including whether the water provider has sought or received other financial assistance;
- Whether a water provider is subject to noncompliance or increased requirements related to the provision of raw water, drinking water, water treatment, or wastewater treatment;
- Whether the proposed use of financing relates to a project identified in and in furtherance of the state water plan; and
- The geographic location and demographic characteristics of the water provider and its customers.

The enterprise shall provide, and a water provider may use, the financing only:

- In connection with the provision of raw water, drinking water, water treatment, or wastewater treatment; and
- For feasibility studies, consulting, planning, permitting, and construction of infrastructure and water conservation projects and related recreational, hydroelectric, and flood control facilities, including necessary enlargement and rehabilitation of facilities but excluding maintenance and operation.

Comments:

HB20-1095 Local Governments Water Elements in Master Plans

SWCD Position: Discussion
CWC Position: **Monitor.**
Sponsors: House (Arndt), Senate (Bridges)
Committee of Reference: Rural Affairs & Agriculture
Title: Concerning the authority of a local government's master plan to include policies to implement state water plan goals as a condition of development approvals.

Summary: The bill authorizes a local government master plan to include goals specified in the state water plan and to include policies that condition development approvals on implementation of those goals.

Comments:

HB20-1097 Connected Municipal Use No Change If Already Quantified

SWCD Position: Discussion
CWC Position: Postponed, awaiting input from CWC subcommittee that is working towards an amendment.
Sponsors: House (Young, Arndt)
Committee of Reference: Rural Affairs & Agriculture
Title: Concerning the ability to use water that has been adjudicated for municipal use in an interconnected treated municipal water supply system if the historical consumptive use of the water right has already been quantified in a previous change of the water right.

Summary: Current law limits the place of use of water subject to a changed water right that has been decreed for use in a treated domestic or municipal water supply system to only that system. The bill authorizes the use of that water in an interconnected treated domestic or municipal water supply system if:

- The water is attributable to a water right for which the historical consumptive use has previously been quantified, diverted from a point of diversion that has already been decreed for that water right, and delivered from the decreed treated system to the interconnected treated system without the water being returned to the natural stream; and
- The owner of the water right has given written notice to the division engineer that identifies the proposed accounting for the use of the water right and the division engineer has approved the accounting.

The owner of the water right must give notice to all persons on the substitute water supply plan notification list for the applicable water division. The division engineer will review any comments received on the proposed accounting and make a determination whether the accounting is adequate. This determination may be appealed to the water judge. Other than the place of use, all of the terms and conditions of the previous change of water right decree continue to apply to the water right. A claim to any return flows from the use of the water right in the interconnected treated domestic or municipal water supply system must be approved by the water judge.

Comments: State Affairs Committee has formed a subcommittee with East and West Slope chairs.

HB20-1119 State Government Regulation of Perfluoroalkyl and Polyfluoroalkyl Substances

SWCD Position: Discussion
CWC Position: Action postponed until 2/10.
Sponsors: House (Exum/Landgraf), Senate (Hisey/Lee)
Committee of Reference: Natural Resources & Environment
Title: Concerning the authority of the state government to regulate perfluoroalkyl and polyfluoroalkyl substances.

Summary: The bill addresses the authority of the state government to regulate perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Section 1 of the bill addresses when PFAS may be used for firefighting foam system testing both in general and in certain aircraft hangars.

Section 2 grants the department of public health and environment the power to adopt and enforce standards and regulations that require public drinking water systems to sample drinking water supply sources and finished drinking water for PFAS.

Section 3 clarifies that the water quality control commission may set standards related to PFAS in surface water and groundwater and may require wastewater systems to collect PFAS data relevant to the commission setting PFAS standards.

Section 4 requires the solid and hazardous waste commission to promulgate rules for a certificate of registration for any facility or fire department that possesses PFAS in firefighting agents or firefighting equipment and for standards for the capture and disposal of PFAS in firefighting agents or firefighting equipment.

Comments:

[HB20-1138](#) Public Real Property Index

SWCD Position: Discussion
CWC Position: **Action tabled for 2/10.**
Sponsors: House (Coleman/Larson), Senate (Bridges/Gardner)
Committee of Reference: Transportation & Local Government
Appropriations

Title: Concerning supplementing the centralized inventory of state-owned real property maintained by the office of the state architect to include all publicly owned real property.

Summary: Not later than December 31, 2020, the bill requires each state agency, state institution of higher education, and political subdivision of the state to submit to the office of the state architect (office) a list of all usable real property owned by or under the control of the agency, institution, or political subdivision of the state. This list must include, if applicable:

- The address where the real property is located;
- The size of the real property;
- How the real property is zoned;
- Contact information for the state agency, institution, or political subdivision of the state that owns or controls the real property;
- The plan, if one is available, for the use, development, or sale of the real property; and
- A description that includes the condition of the real property and a measurement of total area of the real property that is vacant, unused, or underdeveloped.

Not later than December 31 of each subsequent year, each state agency, state institution, and political subdivision of the state must submit to the office any updates to the information the agency, institution, or political subdivision of the state originally submitted to the office about the usable real property the agency, institution, or political subdivision of the state owns or controls.

Beginning July 1, 2021, whenever any state agency, state institution of higher education, or political subdivision of the state plans to offer any usable real property for sale, or otherwise plans to solicit any offer to purchase real property, the agency, institution, or political subdivision of the state shall notify the office.

Not later than July 1, 2021, the office must establish and maintain a current database that includes the information listed above. This database must be available free of charge to the public on the office's website.

Comments: *Amendment proposed to exempt municipal water utilities.*

HB20-1143 Environmental Justice and Projects Increase Environmental Fines

SWCD Position: Discussion

CWC Position: Discussion.

Sponsors: House (Exum/Landgraf), Senate (Hisey/Lee)

Committee of Reference: Natural Resources & Environment

Title:

Concerning additional public health protections regarding alleged environmental violations, and, in connection therewith, raising the maximum fines for air quality and water quality violations and allocating the fines to environmental mitigation projects.

Summary:

Current state law sets the maximum civil fine for most air quality violations at \$15,000 per day and most water quality violations at \$10,000 per day, but federal law allows the federal environmental protection agency to assess a maximum daily fine per violation of \$47,357 for these violations.

Sections 2 and 4 of the bill raise the maximum fine to \$47,357 per day and direct the air quality control commission and the water quality control commission in the department of public health and environment (department) to annually adjust the maximum fine based on changes in the consumer price index.

Current law allocates all water quality fines to the water quality improvement fund; **section 4** authorizes the use of money in that fund to pay for projects addressing impacts to environmental justice communities. Section 4 also extends the repeal date for the water quality improvement fund to September 1, 2025.

Current law allocates all air quality fines to the general fund; **section 3** allocates them to the newly created community impact cash fund. Section 3 also:

- Specifies that the department is to use money in the community impact cash fund for environmental mitigation projects (EMPs);
- Defines an EMP as a project that avoids, minimizes, or mitigates the adverse effects of a violation or alleged violation of the air quality or water quality laws;
- Creates the environmental justice advisory board to recommend EMPs in response to violations or alleged violations that affect environmental justice communities; and
- Creates an environmental justice ombudsperson position within the department, who serves as chief staff to the advisory board and advocates for environmental justice communities.

Section 3 also requires the department to post proposed EMPs on the department's website in a format that allows the public to submit comments on the proposed EMP, not approve an

EMP until at least 45 days after the EMP has been posted on its website, and include a description of all approved EMPs in its departmental SMART Act presentations.

Section 1 sunsets the advisory board on September 1, 2025.

Comments:

[HB20-1157](#) **Loaned Water for Instream Flows to Improve Environment**

SWCD Position: Discussion

CWC Position: Postpone action until 2/10 to allow the proposal of an amendment to the bill that would protect existing undecreed exchanges.

Sponsors: House (Roberts/Will), Senate (Donovan)

Committee of Reference: Rural Affairs & Agriculture

Title: Concerning the Colorado water conservation board's authority to use water that a water right owner voluntarily loans to the board for instream flow purposes.

Summary: Under current law, the Colorado water conservation board (board), subject to procedural requirements established to prevent injury to water rights and decreed conditional water rights, may use loaned water for instream flows if the loaned water is used for preserving the natural environment of a stream reach that is subject to a decreed instream flow water right held by the board.

The bill expands the number of years within a 10-year period that a renewable loan may be exercised from 3 years to 5 years, but for no more than 3 consecutive years, and allows a loan to be renewed for up to 2 additional 10-year periods. The bill limits the duration that an expedited loan may be exercised for up to one year and prohibits an applicant from seeking additional expedited loans regarding a water right following an approved expedited loan of that water right.

The bill also expands the board's ability to use loaned water for instream flows to improve the natural environment to a reasonable degree pursuant to a decreed instream flow water right held by the board.

In considering whether to accept a proposed loan, the board must evaluate the proposed loan based on biological and scientific evidence presented, including a biological analysis performed by the division of parks and wildlife.

The state engineer will review a proposed loan and must consider any comments filed by parties notified of the application in determining whether the loaned water will not cause injury to other vested or conditionally decreed water rights. The filing fee is increased from \$100 to \$300.

The board is required to promulgate rules regarding the necessary steps for reviewing and accepting a loan for instream flow use to improve the natural environment to a reasonable degree.

The state engineer's decision to approve or deny a proposed loan may be appealed to a water judge, who is required to hear and determine the matter on an expedited basis using the procedures and standards established for matters rereferred to the water judge by a water referee.

Comments:

HB20-1159 State Engineer Confirm Existing Use Instream Flow

SWCD Position: Support.

CWC Position: Support.

Sponsors: House (Roberts/Catlin), Senate (Donovan/Coram)

Committee of Reference: Rural Affairs & Agriculture

Title: Concerning the authority of the state engineer to confirm the extent of uses of water in existence on the date of an instream flow appropriation.

Summary: Current law specifies that the Colorado water conservation board's appropriation of water for instream flow purposes is subject to existing uses and exchanges of water. The bill directs the state engineer, in administering current law, to confirm a claim of an existing use or exchange if the use or exchange has not previously been confirmed by court order or decree. The person making the claim may also seek confirmation by the water judge.

Comments:

HB20-1164 Housing Authority Exemptions from Water Fees

SWCD Position: Discussion

CWC Position: Oppose.

Sponsors: House (Rich/Becker), Senate (Zenzinger)

Committee of Reference: Transportation & Local Government

Title: Concerning the exemption of a housing authority from certain fees imposed by a water conservancy district.

Summary: The bill specifies that housing authorities are exempt from tap fees and development impact fees imposed by a water conservancy district.

Comments:

HB20-1172 No Abandonment of Water Rights for Efficiencies (NEW SINCE LAST REPORT)

SWCD Position: Discussion

CWC Position: Discussion

Sponsors: House (Arndt), Senate (N/A)

Committee of Reference: Rural Affairs & Agriculture

Title: Concerning protecting the water rights of persons who implement efficiencies that reduce their water usage.

Summary: Current law provides that a period of nonuse of a portion of a water right is tolled, and no intent to discontinue permanent use is found for purposes of determining an abandonment of a water right, for the duration that the nonuse of the water right by its owner is a result of any of certain conditions. The bill adds a condition that applies when the nonuse of a portion of a water right is a result of the implementation of efficiency improvement projects or methods that result in a reduction of the amount of water diverted for the decreed beneficial use. In such case:

- For the period of nonuse to be tolled, the owner of the water right must submit written notice of the efficiency improvement project or method to the division engineer, on a

- form prescribed by the division engineer, within one year of the date that the efficiency improvement project or method is first implemented; and
- The nonuse of the portion of the water right is tolled for a maximum of 20 years.

Comments:

HB20-1233 **Basic Life Functions In Public Spaces (NEW SINCE LAST REPORT)**

SWCD Position: Discussion
CWC Position: Not yet discussed
Sponsors: House (Melton, Benavidez)
Committee of Reference: Transportation & Local Government
Title: Concerning constitutional protections for conducting basic life functions in public spaces.

Summary: The bill **prohibits** the state and any city, county, city and county, municipality, or other political subdivision (government entity) from restricting any person from:

- Conducting basic life functions in a public space unless the government entity can offer alternative adequate shelter to the person and the person denies the alternative adequate shelter; and
- Occupying a motor vehicle, provided that the motor vehicle is legally parked on public property or parked on private property with the permission of the property owner.

Comments:

For reference, listed below are bills that the SWCD board has already discussed and CWC has taken a position on.

<u>SB20-024</u>	Require Public Input on Water Demand Management Program
SWCD Position:	Discussion
CWC Position:	Monitor.
Sponsors:	Senate (Coram/Donovan), House (Arndt/Catlin)
Committee of Reference:	Agriculture & Natural Resources
Title:	Concerning the inclusion of public input in the development of a state water resources demand management program.
Summary:	Water Resources Review Committee. The bill requires the CWCB and the water resources review committee to involve the public and provide opportunities for public comment, using procedures similar to those used for initial adoption of the state water plan , before adopting any final or significantly amended water resources demand management program as part of the Colorado upper basin states' drought contingency plan.
Comments:	Postponed indefinitely by one of the sponsors.

<u>SB20-048</u>	Study Strengthening Water Anti-Speculation Law
SWCD Position:	Discussion
CWC Position:	No position taken, CWC will continue to monitor the bill's progress.
Sponsors:	Senate (Donovan/Coram), House (Roberts/Catlin)
Committee of Reference:	Agriculture & Natural Resources
Title:	Concerning a study to consider the strengthening of the prohibition on speculative appropriations of water
Summary:	Water Resources Review Committee. Current law specifies that an appropriation of water cannot be based on speculation, as evidenced by either of the following: <ul style="list-style-type: none">• The applicant does not have either a legally vested interest or a reasonable expectation of procuring such an interest in the lands or facilities to be served by the appropriation, unless the appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by the appropriation; or• The applicant does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses. The bill requires the executive director of the department of natural resources to convene a work group to explore ways to strengthen current anti-speculation law and to report to the water resources review committee by August 15, 2021, regarding any recommended changes.
Comments:	

<u>SIR20-003</u>	Water Projects Eligibility Lists
SWCD Position:	Support.
CWC Position:	Support.
Sponsors:	Senate (Donovan), House (Roberts)
Committee of Reference:	Agriculture & Natural Resources

Title: Concerning approval of water project revolving fund eligibility lists administered by the Colorado water resources and power development authority.

Summary: Pursuant to C.R.S. 37-95-107.8 (4)(b), this bill codifies additions, modifications, or deletions to the Drinking Water Project Eligibility List and Water Pollution Control Project Eligibility List, as developed by the Water Quality Control Commission.

Comments:

[HB20-1037](#) **Augmentation of Instream Flows**

SWCD Position: Discussion

CWC Position: Support conditioned upon forthcoming amendment.

Sponsors: House (Arndt), Senate (Coram)

Committee of Reference: Rural Affairs & Agriculture

Title: Concerning the CWCB's authority to augment stream flows with acquired water rights that have been previously decreed for augmentation use.

Summary: The bill authorizes the CWCB to augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been previously quantified and changed to include augmentation use, without a further change of the water right being required.

Comments:

[HB20-1042](#) **PFAS Polyfluoroalkyl Substances Manufacturer Notice Requirements**

SWCD Position: Discussion

CWC Position: Monitor

Sponsors: House (Valdez, McKean), Senate (Moreno/Tate)

Committee of Reference: Transportation & Local Government

Title: Concerning a modification of the notice requirements for manufacturers of perfluoroalkyl and polyfluoroalkyl substances.

Summary: **Statutory Revision Committee.**

House Bill 19-1279, enacted in 2019, requires manufacturers of class B firefighting foam that contains intentionally added polyfluoroalkyl substances to notify, in writing, sellers of their products about the state's new regulations of these products "no less than one year prior to the effective date of section 25-5-1303", which is impossible because the notice requirements did not exist prior to the bill's effective date on August 2, 2019. The bill **addresses this error** by modifying the effective date of the required notice to prior to August 2, 2020.

Comments:

[HB20-1069](#) **Add Water Well Inspectors Identify High-Risk Wells**

SWCD Position: Discussion

CWC Position: Support

Sponsors: House (Saine/Titone), Senate (Sonnenberg/Coram)

Committee of Reference: Rural Affairs & Agriculture

Title: Concerning the inspection of water wells.

Summary: Water Resources Review Committee.

The bill requires the state engineer to employ a minimum of 4 water well inspectors in the state's water well inspection program.

The bill requires the state board of water well construction and pump installation contractors, on or before November 1, 2020, to promulgate rules for identifying high-risk water wells that should be prioritized for inspection. Thereafter, the state engineer shall use the rules to identify high-risk water wells and shall prioritize the inspection of high-risk water wells.

The bill clarifies that money in the well inspection cash fund shall be appropriated to and expended by the state engineer only for the well inspection program.

Comments:

[HB20-1072](#) Study Emerging Technologies for Water Management

SWCD Position: Discussion
CWC Position: Support
Sponsors: House (Arndt/Saine), Senate (Sonnenberg/Bridges)
Committee of Reference: Rural Affairs & Agriculture

Title: Concerning a requirement that the university of Colorado study potential uses of emerging technologies to more effectively manage Colorado's water supply, and, in connection therewith, making an appropriation, conditioned on the receipt of matching funds from gifts, grants, and donations.

Summary: Water Resources Review Committee.

The bill declares that new technologies, such as blockchain, telemetry, improved sensors, and advanced aerial observation platforms, can improve monitoring, management, conservation, and trading of water and enhance confidence in the reliability of data underlying water rights transactions. To advance the potential use of these new technologies, the bill:

- Authorizes and directs the University of Colorado, in collaboration with the Colorado Water Institute at Colorado State University, to conduct feasibility studies and pilot deployments of these new technologies to improve water management in Colorado; and
- Appropriates \$40,000 from the general fund, contingent on the university of Colorado's receipt of a matching \$40,000 in gifts, grants, and donations, for the purpose of funding the studies and pilot programs.

Comments:

[HB20-1094](#) Repeal Fee Cap On-site Wastewater Treatment System

SWCD Position: Discussion
CWC Position: Support.
Sponsors: House (Catlin/Arndt), Senate (Ginal/Coram)
Committee of Reference: Rural Affairs & Agriculture

Title: Concerning a repeal of the dollar limitation on the fee that a local board of health may set for on-site wastewater treatment system permits.

Summary: Current law requires that a local board of health set the permit fee for on-site wastewater treatment system permits in an amount to recover the actual indirect and direct costs associated with the permit and sets a \$1,000 cap on the fee. The bill repeals the dollar limitation on the fee.

Comments:

Monitoring legislation is integral to keeping a finger on the pulse of dynamic water policy in the state. On behalf of its diverse constituents in southwestern Colorado, the Southwestern Water Conservation District (SWCD) tracks state water legislation closely, specifically through participation in the Colorado Water Congress State Affairs Committee. Beth Van Vurst, SWCD General Counsel, and Frank Kugel, SWCD Executive Director, participate in the State Affairs Committee meetings weekly during the legislative session (January-May) and ensure southwestern Colorado is considered as the State legislature enacts new laws affecting water management.

SWCD staff provides this written summary of water-related legislation, updated throughout the session via email to interested stakeholders and public. To be added to the list, please contact lauras@swwcd.org. We hope that you find the updates beneficial and informative.