



SOUTHWESTERN WATER CONSERVATION DISTRICT

2020 State Legislative Update: [May 26, 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 March 11th (the SWCD board's last consideration of legislation) are highlighted in blue.

The Colorado Water Congress (CWC) State Affairs Committee met on May 11th, May 18th and May 26th. **Positions taken on bills since March 11th (the SWCD board's last consideration of legislation) are in red text for CWC and green text for SWCD.**

[SB20-189](#) **Local Government Pesticide No Preemption**

SWCD Position: Discussion.

CWC Position: Discussion.

Sponsors: Senate (Fenberg), House (Cutter, Duran)

Committee of Reference: Agriculture & Natural Resources

Bill Status: Scheduled for committee consideration (Senate Ag & Natural Resources) on March 19th.

Title: Concerning provisions that preempt a local government's authority to regulate the use of pesticides within the local government's jurisdiction.

Summary: Current state law prohibits local governments from substantively regulating the use and application of pesticides. The bill authorizes local governments to regulate pesticide use and application. In connection with this authorization, the bill:

- Declares pesticide regulation a matter of both statewide and local concern;
- Repeals provisions that prohibit local regulation of pesticide use and application and explicitly authorizes a county to enact this type of regulation;
- Permits local governments to regulate pesticide use and application except in connection with the cultivation of marijuana and the production of agricultural products;
- Clarifies that a local government must meet the requirements of state and federal law; and
- Gives state courts exclusive jurisdiction to review local pesticide laws.

Comments:

[SB20-201](#) **Species Conservation Trust Fund Projects (NOT YET CONSIDERED BY SWCD BOARD)**

SWCD Position: Discussion.

CWC Position: **Support.**

Sponsors: Senate (Donovan), House (Roberts)

Committee of Reference: Agriculture & Natural Resources

Bill Status: Scheduled for committee consideration (Senate Ag & Natural Resources) on March 19th.

Title: Concerning support for species conservation trust fund projects, and, in connection therewith, making an appropriation.

Summary: The bill appropriates \$4 million from the species conservation trust fund for programs submitted by the executive director of the department of natural resources that are designed to conserve native species that state or federal law list as threatened or endangered or that are candidate species or are likely to become candidate species as determined by the United States fish and wildlife service, allocated as follows:

- Native terrestrial wildlife conservation, \$1,107,505;
- Native aquatic wildlife conservation, \$892,495;
- Platte river recovery implementation program, \$1,900,000; and
- Selenium management, research, monitoring, evaluation, and control, \$100,000.

Comments:

HB20-1119 State Government Regulation of Perfluoroalkyl and Polyfluoroalkyl Substances

SWCD Position: Monitor.

CWC Position: Action postponed until 3/16.

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

Committee of Reference: Energy & Environment

Reference:

Bill Status: Passed out of House Energy & Environment Committee with significant amendments (March 9th). Referred, as amended, to Finance Committee.

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:

SWCD Position: Discussion.**CWC Position:** Discussion.**Sponsors:** House (Benavidez/Valdez), Senate (Gonzales/Moreno)**Committee of** Energy & Environment**Reference:** Appropriations**Bill Status:** Scheduled for committee consideration (House Finance) on March 23rd.**Title:** Concerning increased public protections from emissions of air toxics.**Summary:** The bill creates a new program to regulate emissions of a subset of hazardous air pollutants, referred to as "covered air toxics", which are defined as hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, benzene, and other hazardous air pollutants specified by the air quality control commission by rule. A stationary source of air pollutants that reported in its federal toxics release inventory filing at least one of the following amounts of a covered air toxic in one year is defined as a "covered facility":

- For hydrogen cyanide, 10,000 pounds;
- For hydrogen fluoride, 10,000 pounds;
- For hydrogen sulfide, 5,000 pounds; and
- For benzene, 1,000 pounds.

At least every 5 years beginning in 2026, the commission will review the best available science and adjust, as necessary to protect public health, the list of covered air toxics and their associated emission levels. The commission will:

- Regulate covered air toxics more strictly than is required by the federal clean air act;
- Require covered facilities to monitor their emissions of covered air toxics;
- Set health-based emission limits for covered air toxics if no such limit exists under state or federal law; and
- Establish a real-time community alert system for "incidents", which are unauthorized emissions of an air pollutant from a covered facility.

The division of administration in the department of public health and environment will:

- Consider and prevent adverse cumulative impacts from covered facilities' emissions of hazardous air pollutants when processing air pollution permits for covered facilities that are located in or near disproportionately impacted communities, as determined by the commission by rule;
- Approve a new or amended permit for a covered facility only if there is no net increase in the adverse cumulative impacts of hazardous air pollutant emissions above existing levels in each disproportionately impacted community affected by the emissions; and
- If existing emissions of hazardous air pollutants exceed the health-based emission limits or have unacceptable adverse cumulative impacts on any disproportionately impacted community, require a decrease or cessation in the applicable emissions over the shortest practicable time until the emissions comply with the health-based emission limits and no longer have unacceptable adverse cumulative impacts on any disproportionately impacted community.

Covered facilities will:

- Monitor their covered air toxics emissions and make the monitoring data widely available, including to the public; and
- Promptly disseminate information regarding an incident pursuant to the commission's real-time community alert system to the public, affected local governments and other community entities, and local emergency planning and response organizations.

The bill specifies violations for a covered facility that is covered by specified federal regulations based on the unauthorized emission of an air pollutant from a flare or pressure relief device and any uncontrolled atmospheric release of an air pollutant from an organic hazardous air pollutant pressure relief device. The commission will review its rules for these facilities and specifically consider adopting more stringent provisions, including:

- A requirement that leak detection and repair inspections occur at these facilities on, at a minimum, a semiannual basis or that an alternative approved instrument monitoring method is in place pursuant to existing rules; and
- Reductions in fugitive emissions from equipment leaks and wastewater at these facilities.

Comments:

[HB20-1338](#) Operational Severance Tax Transfer to Agriculture Value-Added

SWCD Position: [Oppose.](#)

CWC Position: Discussion

Sponsors: House (Arndt), Senate (Donovan)

Committee of Rural Affairs & Agriculture

Reference: Appropriations

Bill Status: Scheduled for committee consideration (House Rural Affairs & Agriculture) on March 16th

Title: Concerning the transfer of money from the severance tax operational fund to the agriculture value-added cash fund to be used to promote agricultural energy-related projects.

Summary: If there is money in the severance tax operational fund (operational fund) after funding core departmental programs and a reserve requirement, then the state treasurer makes transfers to the natural resources and energy grant programs (grant programs). The agriculture value-added cash fund (cash fund), which was used to promote agricultural energy-related projects, was one of these grant programs in prior fiscal years.

The bill recreates the agriculture value-added cash fund as a grant program by requiring the state treasurer to transfer \$500,000, or so much as may be available, for the next 9 state fiscal years, from the operational fund to the cash fund to be used to promote agricultural energy-related projects. The transferred money in the cash fund is continuously appropriated to the department of agriculture for allocation to the Colorado agricultural value-added development board for this purpose only.

Comments:

[HB20-1344](#) Study Artificial Recharge Max Beneficial Use Water

SWCD Position: Discussion

CWC Position: Discussion

Sponsors: House (Holtorf)
Committee of Reference: Rural Affairs & Agriculture
Bill Status: Introduced and assigned to House Rural Affairs & Agriculture Committee

Title: Concerning a study of artificial recharge to maximize the beneficial use of water within Colorado.

Summary: The bill directs the Colorado Water Conservation Board, in consultation with the state engineer and the Colorado Water Institute, to conduct a study to:

- Evaluate ways to maximize the beneficial use of water within Colorado by recharging aquifers when surplus or excess water is available;
- Evaluate ways to minimize the amount of water that flows out of Colorado to downstream states, without risking noncompliance with applicable interstate compacts, United States supreme court decrees, and other federal law;
- Identify:
 - Specific aquifers that are hydrologically and legally available to be used for artificial recharge and conveniently located for both artificial recharge and subsequent releases;
 - Sources of revenue that could be used to pay for the artificial recharge; and
 - Particular potential or existing artificial recharge projects that would meet the objectives identified in the study;
- Examine the role that various water entities might play in financing and implementing artificial recharge projects; and
- Recommend legislative or regulatory changes needed to implement the particularly identified artificial recharge projects.

The bill directs the Colorado Water Conservation Board to submit a report summarizing the results of the study to the committees of the general assembly with jurisdiction over water resources by January 1, 2022.

Comments:

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

<u>SB20-008</u>	Enhance Penalties Water Quality Criminal Violations
SWCD Position:	Discussion.
CWC Position:	Support.
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:	<p>Current law specifies that a person who commits criminal pollution of state waters that is committed:</p> <ul style="list-style-type: none">• 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. <p>Section 1 of the bill makes a:</p> <ul style="list-style-type: none">• 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. <p>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.</p> <p>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.</p>

Comments:

<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:	<p>Water Resources Review Committee.</p> <p>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.</p>

Comments: Postponed indefinitely by one of the sponsors.

SB20-048 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:

- 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:

SB20-153 Water Resource Financing Enterprise

SWCD Position: Discussion

CWC Position: **Oppose.**

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: Postponed indefinitely by one of the sponsors.

[SB20-155](#) Keep Presumption Noninjury Well on Divided Land

SWCD Position: Discussion
CWC Position: No position.
Sponsors: Senate (Sonnenberg), House (Pelton)
Committee of Reference: Agriculture & Natural Resources
Bill Status: Third reading in the Senate on Feb 20.
Title: Concerning the continued presumption of noninjury to water rights regarding the use of an exempt well for domestic purposes after the land on which the well is located has been divided into multiple parcels.

Summary: Under current law, a well that is exempt from the state engineer's administration and is used for domestic purposes is afforded a rebuttable presumption that the use of the well will not cause material injury to others' vested water rights or to any other existing well. If the land on which the exempt well is located is later divided into multiple parcels, the well loses that presumption. The bill maintains the presumption of noninjury to vested water rights or other wells when the land on which the well is located is later divided and use of the well continues to meet certain requirements.

Comments:

[SB20-159](#) Global Warming Potential for Public Project Materials

SWCD Position: Monitor.
CWC Position: Monitor.
Sponsors: Senate (Hansen), House (N/A)
Committee of Reference: Transportation & Energy

Bill Status: Passed out of Senate Transportation & Energy Committee on February 20th. Assigned to the Senate Appropriations Committee.

Title: Concerning measures to limit the global warming potential for certain materials used in public projects.

Summary: The department of personnel (department) is required to establish a maximum acceptable global warming potential for each category of eligible materials used in a public project. The bill specifies which building materials are eligible materials.

The department is required to set the maximum acceptable global warming potential at the industry average of facility-specific global warming potential emissions for that material and to express it as a number that states the maximum acceptable facility-specific global warming potential for each category of eligible materials.

The department is required to submit a report to the general assembly regarding the method it used to develop the maximum global warming potential for each category of eligible materials and may make periodic downward adjustments to the number to reflect industry improvements.

For invitations for bid for public projects issued after a certain date, the contractor that is awarded the contract is required to submit to the contracting agency of government a current facility-specific environmental product declaration for each eligible material proposed to be used in the public project.

A contracting agency of government is required to include in a specification for bids for a public project that the facility-specific global warming potential for any eligible material that will be used in the project shall not exceed the maximum acceptable global warming potential for that material determined by the department.

A contractor that is awarded a contract for a public project is prohibited from installing any eligible material on the project until the contractor submits a facility-specific environmental product declaration for that material.

The bill specifies that in administering the requirements of the bill, an agency of government is required to strive to achieve a continuous reduction of greenhouse gas emissions over time.

The department is required to submit a report to the general assembly regarding the implementation of the bill.

The bill includes the facility-specific global warming potential for each eligible material that will be used in the project and the cost of avoided emissions for the project in the factors to be considered when making an award determination for a competitive sealed best value bid.

Comments:

[SIR20-003](#) **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:

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, CWC formed a subcommittee, which met and collected a lot of good input. The group has decided to shift its approach on an amendment from a subcommittee to a more engaged discussion process this summer.

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.

HB20-1138 **Public Real Property Index**

SWCD Position: Oppose.

CWC Position: Monitor.

Sponsors: House (Coleman/Larson), Senate (Bridges/Gardner)

Committee of Transportation & Local Government

Reference: Appropriations

Bill Status: Passed out of House Transportation and Local Government Committee on February 19th. Assigned to House Appropriations Committee.

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 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: **Support with amendment.**
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:

<u>HB20-1164</u>	Housing Authority Exemptions from Water Fees
SWCD Position:	Oppose.
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**

SWCD Position: Support.
CWC Position: Discussion.
Sponsors: House (Arndt), Senate (N/A)
Committee of Reference: Rural Affairs & Agriculture
Bill Status: This bill was postponed indefinitely on March 2nd.
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:

[HB20-1215](#) **Sunset Water Wastewater Facility Operators Certification Board**

SWCD Position: Discussion
CWC Position: Support conditioned upon amendment to the bill, which would replace the language that was stricken from the definition of "industrial wastewater treatment facility" in the introduced bill.
Sponsors: House (Valdez, Froelich), Senate (Foote)

Committee of Reference: Energy & Environment Appropriations

Bill Status: Passed out of the House on Third Reading. Scheduled for committee consideration on March 12th (Senate Ag & Natural Resources)

Title: Concerning the continuation of the water and wastewater facility operators certification board, and, in connection therewith, implementing the recommendations contained in the 2019 sunset report by the department of regulatory agencies and making an appropriation.

Summary: The bill implements the recommendations of the department of regulatory agencies' sunset review of the water and wastewater facility operators certification board by:

- Extending the repeal date of the board until September 1, 2031 (sections 1 and 2 of the bill);
- Amending the definition of "domestic wastewater treatment facility" to exclude only those small on-site wastewater treatment systems with a design capacity of 2,000 gallons or less per day, unless the system discharges directly to surface water (section 3);
- Repealing the exclusion of facilities designed to operate for less than one year and facilities with in-situ discharges from the definition of "industrial wastewater treatment facilities" (section 3);
- Creating a water and wastewater facility operators fund for fees that the board receives directly and uses for the exclusive use of the regulatory program (section 4);
- And repealing an obsolete provision of law relating to a reorganization of the board on July 1, 2004 (section 2).

The bill appropriates \$24,815 from the water and wastewater facility operators fund to the department of public health and environment for use by the drinking water program.

Comments:

[HB20-1233](#) **Basic Life Functions in Public Spaces**

SWCD Position: **Oppose.**

CWC Position: **Oppose.**

Sponsors: House (Melton, Benavidez)

Committee of Reference: Transportation & Local Government

Bill Status: Scheduled for committee consideration February 26th (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:

[HB20-1287](#) **Colorado Rights Act**

SWCD Position: Discussion
CWC Position: Discussion.
Sponsors: House (Soper), Senate (Marble/Lee)
Committee of Reference: Judiciary, Appropriations
Bill Status: **This bill was postponed indefinitely on March 5th.**
Title: Concerning enforcement of Colorado constitutional rights in Colorado state courts.
Summary: The bill allows a person who has a right, privilege, or immunity secured by the Colorado constitution that is infringed upon to bring a civil action for the violation. The attorney general can also bring an action under the same circumstances. A plaintiff who prevails in the lawsuit is entitled to reasonable attorney fees, and a defendant in an individual suit is entitled to reasonable attorney fees for defending any frivolous claims. Qualified immunity and a defendant's good faith but erroneous belief in the lawfulness of his or her conduct are not defenses to the civil action. The civil action has a two-year statute of limitations. The bill requires a public entity to indemnify its public employees in a claim unless the employee is convicted of a crime related to the claim.

Comments:

[HB20-1327](#) Water Diversions from Rio Grande Basin

SWCD Position: Discussion
CWC Position: **Oppose.**
Sponsors: House (Valdez, Will), Senate (Coram)
Committee of Reference: Rural Affairs & Agriculture
Bill Status: **Bill postponed indefinitely by House Rural Affairs & Agriculture (March 9th).**
Title: Concerning additional requirements applicable to diversions of water from water division 3.
Summary: The bill prohibits each state agency or instrumentality from approving or assisting any project that diverts water from water division 3, which consists of the Rio Grande river basin, for export to another basin in Colorado or export to any portion of another state unless the state engineer determines, after due consideration of all findings provided by the Colorado water conservation board, that the project will not:

- Increase the costs or negatively affect operation of the federal closed basin project;
- Adversely affect the purposes of any national wildlife refuge or federal wildlife habitat area withdrawal located in water division 3;
- Adversely affect the purposes of the Great Sand Dunes national park and Great Sand Dunes national preserve; or
- Increase the costs or negatively affect operation of any state parks, state wildlife areas, or lands administered by the state board of land commissioners located in water division 3.

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@swgcd.org. We hope that you find the updates beneficial and informative.