



Colorado
Legislative
Council
Staff

Summary *of*
Legislation
2017

Water

During the 2017 legislative session, the General Assembly considered measures to address Colorado's growing demand for water and to fund public drinking water and wastewater projects.

Addressing Colorado's Growing Demand for Water

The Colorado Water Conservation Board (board) in the Department of Natural Resources is the state's primary water policy and planning agency. It is governed by a 15-member board that is charged with conserving the state's waters to promote utilization and to prevent floods. According to the board, an additional 630,000 acre feet of water will be needed annually to meet demand in 2030, primarily for municipal and industrial purposes. An acre-foot is approximately the amount of water used by two families in a year.

The Colorado Water Conservation Board Construction Fund provides low-interest loans for water projects. Revenue for this revolving loan fund comes from interest earned on outstanding loans and the fund's cash balance and distribution of royalties from federal mineral leases. *House Bill 17-1248* appropriates \$30.4 million for several water supply projects including \$1.0 million for continuation of the Alternative Agricultural Transfer Methods Grant Program; \$1.1 million for implementation of the Colorado water loss control initiative; \$10.0 million for continuation of the Rio Grande cooperative project; \$5.0 million for continuation of the watershed

restoration program; and \$10.0 million for implementation of the Colorado Water Plan. The act also appropriated \$260,000 from the Public and Private Utilities Sector Fund to the Water Quality Control Division in the Colorado Department of Public Health and Environment for updating regulations related to nonpotable water reuse and graywater usage.

Alternatives to Permanent Agricultural Water Rights Transfers

Under current law, the board administers a pilot program to demonstrate the practice of fallowing irrigated agricultural land and temporarily leasing the associated water rights. Fallowing is the practice of leaving plowed agricultural land unseeded for one or more growing seasons. *House Bill 17-1219* makes changes to the program and allows the board to authorize up to 15 pilot projects. No more than five pilot projects may be located in any one of the four major river basins. Applications to sponsor a project must be received by December 31, 2023. All projects must be completed by 2034.

Allowable Uses and Changes of Water Right

A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Water rights are created by using water for a legally recognized use, such as irrigation. Water

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rights may be obtained for a number of legally recognized beneficial uses. *Senate Bill 17-117* confirms that a person with an absolute or conditional water right decreed for agricultural use can use that water for the growth or cultivation of any product authorized under Colorado agricultural law, which includes industrial hemp.

House Bill 17-1190 provides that the decision in *St. Jude's Co. v. Roaring Fork Club, LLC*, 351 P.3d 442 (Colo. 2015), interpreting the definition of "beneficial use," does not apply to absolute and conditional water rights for which a decree was entered as of July 15, 2015.

When a water right owner wants to change a water right – such as changing an agricultural water right to a municipal water right -- the amount of water that can be changed is limited to the historical consumptive use of the water right. Current law provides that the reduced water usage that results from participation in a government-sponsored water conservation program will not be considered in analyzing the historical consumptive use of the water right, but only in water divisions 4, 5, or 6. *House Bill 17-1233* expands the application of this rule to water division 1, 2, and 3; includes water conservation pilot programs; and limits state agencies that can approve a water conservation program to only those that have explicit statutory jurisdiction over water conservation or water rights. *House Bill 17-1289* directs the interim Water Resources Review Committee to study the issue of whether the State Engineer should promulgate rules that adopt a nonbinding, streamlined methodology for determining factors and using other assumptions for calculating the historical consumptive use of a water right.

Senate Bill 17-282, which was postponed indefinitely by the Senate Agriculture, Natural Resources, and Energy Committee, would have created a process by which a storage water right owner may obtain a water court decree authorizing releases to be delivered downstream for decreed beneficial uses by the board. The releases would have been allowed to be used in the intervening stream reach to

preserve or improve the natural environment, if certain conditions are met.

Water Storage

Storing water enables water rights owners to collect water when supplies exceed demand and hold it for use during droughts and seasonal water shortages. Dams and above ground reservoirs are the most common method of storage. However, above ground reservoirs are expensive to build, expose water to evaporation, and can appear unsightly when drained. Colorado has large aquifers that can hold additional water through artificial recharge with minimal infrastructure improvements. Water stored underground is protected from evaporation and, when drained, such aquifers do not have the same esthetic impacts as drained reservoirs. Currently, the State Engineer must promulgate rules for the permitting and use of waters artificially recharged into four named aquifers. *House Bill 17-1076* adds the requirement that the State Engineer also promulgate rules for the permitting and use of waters artificially recharged into nontributary groundwater aquifers. Unlike tributary aquifers, such aquifers are hydraulically disconnected from surface streams. The rules must be promulgated on or before July 1, 2018.

Current law allows water to be stored only at a location that has been specifically identified in a water rights decree. *House Bill 17-1291* allows a water right for which the historical consumptive use was previously quantified to be stored in any reservoir, without the necessity of adjudicating an additional change of water right, if the water will be diverted from a point of diversion that has already been decreed for that water right and the alternate place of storage is located on the same ditch or reservoir system, and several other conditions are also met.