

**NO FISCAL IMPACT**

---

<b>Drafting Number:</b> LLS 11-0913	<b>Date:</b> March 17, 2011
<b>Prime Sponsor(s):</b> Rep. Sonnenberg; Becker Sen. Schwartz	<b>Bill Status:</b> House Agriculture
	<b>Fiscal Analyst:</b> Lauren Ris (303-866-3264)

---

**TITLE:** CONCERNING THE STATE ENGINEER'S RULE-MAKING AUTHORITY IN THE CASE OF DEWATERING OF GEOLOGIC FORMATIONS BY WITHDRAWING NONTRIBUTARY GROUND WATER TO FACILITATE THE MINING OF MINERALS.

**Summary of Legislation**

The bill clarifies the State Engineer's rule-making authority in the Department of Natural Resources regarding dewatering geologic formations for mining operations. The bill specifies that the State Engineer can make rules to determine which ground water in the formations or basins is determined to be nontributary, and can establish rule-making and adjudicatory procedures for nontributary determinations after the initial rule-making. The bill also specifies that the courts must presume that any applicable nontributary determination made by the State Engineer is valid, subject to rebuttal. The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to nontributary determinations made and rules promulgated before, on, or after the applicable effective date.

**Background**

Nontributary groundwater is located outside groundwater basins designated by the Colorado Ground Water Commission where water withdrawal will not, within 100 years, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal. Nontributary groundwater is not subject to prior appropriation and is instead based on ownership of the overlying land and a 100-year aquifer life expectancy. House Bill 09-1303 directed the State Engineer to promulgate rules regarding the withdrawal of nontributary ground water to facilitate oil and gas development.

**Assessment**

This bill is assessed at no fiscal impact. The State Engineer's Office has already adopted Produced Nontributary Ground Water Rules pursuant to existing rulemaking authority under House Bill 09-1303. The rules identify and geographically delineate the locations at which the State Engineer will consider ground water produced from certain formations to be nontributary. The rules also establish an adjudicatory procedure whereby the State Engineer may make individual nontributary determinations for purposes of the State Engineer's administration of produced water.

**Departments Contacted**

Natural Resources