



*Colorado Legislative Council Staff Fiscal Note*

**NO FISCAL IMPACT**

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**Drafting Number:** LLS 08-0402

**Date:** February 11, 2008

**Prime Sponsor(s):** Rep. Fischer  
Sen. Schwartz

**Bill Status:** House Agriculture

**Fiscal Analyst:** Marc Carey (303-866-4102)

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**TITLE:** CONCERNING PROTECTION OF WATER RIGHTS USED BY THE COLORADO WATER CONSERVATION BOARD FOR INSTREAM FLOWS UNDER CONTRACTS WITH WATER RIGHTS OWNERS.

### Summary of Legislation

This bill specifies that water rights which have been leased or loaned to the Colorado Water Conservation Board (CWCB) for instream-flow purposes to preserve or improve the natural environment are to be excluded from the water court's historic consumptive use analysis, and shall not be considered as abandoned water rights.

In addition, in the case of such loan or lease agreements, the CWCB is required to:

- make a finding that the lessor or lender is not entering into the agreement for speculative purposes;
- maintain records regarding how much water it uses for each year that the lease or loan agreement is in effect; and
- install a measuring device to record how much water flows out of the affected reach if none currently exists.

The bill also requires the water court, as part of its evaluation of a change decree related to the agreement, to make a finding that the lessor or lender has not entered into the agreement for speculative purposes.

Finally, the bill specifies that an application for a change of a water right located in the same stream basin as the reach on which water that has been loaned or leased to the CWCB for in-stream flows, may not claim historic consumptive use from water made available through the agreement. The bill will become effective upon signature of the Governor, or upon becoming law without his signature.

### Assessment

*Department of Natural Resources, Colorado Water Conservation Board (CWCB).* In some cases, the CWCB would be required to install a measuring device to record the water flow out of an in-stream flow reach. The CWCB currently receives a \$250,000 continuous appropriation to address stream gaging needs. It is anticipated that the cost of any additional gauges required by this bill could be absorbed within this existing appropriation.

***Judicial Branch.*** The bill expands opportunities to loan or lease water for in-stream flows. It is not expected to cause an increase in filings in the water courts, as potential cases where an abandonment may be claimed as a result of such an agreement would decrease. There is a potential that change cases may be more expansive as the court will have to make a finding that the change request was not made for speculative purposes. However, the overall impact is anticipated to be minimal and absorbable within existing appropriations.

Thus, the bill does not affect state or local revenues or expenditures and is assessed as having no fiscal impact.

**Departments Contacted**

Natural Resources

Judicial