

**FINAL
FISCAL NOTE**

Drafting Number: LLS 08-0402
Prime Sponsor(s): Rep. Fischer
Sen. Schwartz

Date: June 5, 2008
Bill Status: Signed into Law
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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, the CWCB is required to adopt criteria for evaluating proposed contracts or agreements for leases or loans of water. 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;
- obtain confirmation from a division engineer that the proposed lease or loan is administrable;
- maintain records regarding how much water it uses for each year that the lease or loan agreement is in effect;
- install any measuring device deemed necessary by the division engineer to administer the contract and to record how much water flows out of the affected reach if none currently exists; and
- file a change of water right application with the water court to obtain a decreed right to use water for instream flow purposes.

The bill also requires the water court, as part of its evaluation of a change decree related to the agreement, to quantify the historical consumptive use of the leased or loaned water right.

Finally, the amended bill specifies that decrees for changes of a water right that implement a contract for a lease, loan, or donation of water to the CWCB for instream flow use must provide that either the lessor or the CWCB may put the water to beneficial use downstream of the instream flow reach, in a manner to prevent injury to other vested water rights or decreed conditional water rights. The Governor signed the bill into law on April 21, 2008, and unless a referendum petition is filed, the bill will take effect August 5, 2008.

Assessment

Department of Natural Resources, Colorado Water Conservation Board (CWCB). The bill requires the CWCB to adopt criteria for evaluating leases of loans of water, confirm with a division engineer's office that the lease or loan is administrable, and file a change of water right application with the water court. As the number of such leases or loans is anticipated to be few, additional administrative costs may be absorbed within existing appropriations.

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