



Colorado Legislative Council Staff Fiscal Note
REVISED NO FISCAL IMPACT

(replaces fiscal note dated February 11, 2008)

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Date: March 7, 2008

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

Bill Status: Senate Agriculture

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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 reengrossed 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 the state and division engineers 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 a measuring device 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 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 90 days after adjournment by the General Assembly, unless a referendum petition is filed (August 6, 2008, if adjournment is May 7, 2008).

Assessment

Department of Natural Resources, Colorado Water Conservation Board (CWCB). The reengrossed bill requires the CWCB to adopt criteria for evaluating leases of loans of water, confirm with the state or division engineer's office that the least 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