

*Colorado Legislative Council Staff Fiscal Note*

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 09-0255  
**Prime Sponsor(s):** Rep. Pommer  
 Sen. White

**Date:** June 2, 2009  
**Bill Status:** Signed into Law  
**Fiscal Analyst:** Ron Kirk (303-866-4785)

**TITLE:** CONCERNING THE ESTABLISHMENT OF AN INCENTIVE FOR THE DONATION OF WATER RIGHTS TO THE COLORADO WATER CONSERVATION BOARD FOR USE AS INSTREAM FLOW RIGHTS.

<b>Fiscal Impact Summary</b>	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
<b>State Revenue</b> General Fund*	\$0	(\$1,000,000)
<b>State Expenditures</b> General Fund	\$0	\$0
<b>FTE Position Change</b>		
<b>Effective Date:</b> 90 days after adjournment by the General Assembly, unless a referendum petition is filed. (August 5, 2009 if adjournment is May 6, 2009).		
<b>Appropriation Summary for FY 2009-2010:</b> None Required.		
<b>Local Government Impact:</b> None.		

\* The fiscal note displays the loss in revenue from the tax credit beginning in tax year 2011; however, future revenue forecasts and state budget decisions could push the starting date for the tax credit to a subsequent year.

**Summary of Legislation**

For income tax years beginning on or after January 1, 2009, but prior to January 1, 2015, this bill establishes an instream flow incentive state income tax credit. Thus, the taxpayer can claim a tax credit for a water rights donation that works to protect the natural environment by keeping water in the river. However, it is only available if there is sufficient revenue to grow total state General Fund appropriations by 6 percent over the prior fiscal year. The bill specifies that the Colorado Water Conservation Board (CWCB) will approve the credits by issuing certificates to water rights owners who permanently transfer water rights to the CWCB. The bill establishes the credit at one-half of the value of the donated water right, as determined by an appraisal, with a maximum value of \$250,000. The total amount of credits allowed on an annual basis is limited to \$2.0 million.

If the amount of the credit exceeds the income tax due for the current taxable year, the excess credit may not be carried forward and must be refunded to the taxpayer. The bill provides the Department of Revenue with rulemaking authority to administer the tax credit.

The income tax credit in this bill is only effective for tax years in which the June revenue estimate prepared by Legislative Council Staff indicates that General Fund revenue is sufficient to grow total state General Fund appropriations by 6 percent over the prior fiscal year.

### **State Revenue**

**General Fund.** For income tax years 2009 through 2014, this bill creates a refundable income tax credit for water rights donated to the CWCB capped at \$2.0 million each year. This impact is considered conditional because the credit is only effective if there is sufficient revenue to grow total state General Fund appropriations by 6 percent over the prior fiscal year. Based on the March 2009 Legislative Council Staff revenue forecast, there will be insufficient revenue to allow total state General Fund appropriations to grow by 6 percent in FY 2009-10 and FY 2010-11. Thus, the credit will likely be effective beginning FY 2011-12 assuming the economy rebounds to the extent that revenue growth will be sufficient to allow appropriations to grow by 6 percent over the prior year. It is difficult to know how many water rights holders will choose to donate water to take advantage of this credit. However, because this credit is refundable, this fiscal note assumes that the aggregate cap will be reached on an annual basis.

This bill reduces General Fund revenue by creating a new tax credit for water rights donations. Therefore, the decrease in revenue under this bill will further reduce the amount of money available for General Fund appropriations. A one-half year impact of \$1.0 million is assumed for FY 2010-11 on an accrual accounting basis. This half-year impact is considered conditional because the June 2011 revenue estimate must determine that there is sufficient revenue to allow total state General Fund appropriations to grow by 6 percent over the prior fiscal year.

### **State Expenditures**

**Department of Revenue.** The department will incur additional reprogramming expenses in FY 2011-12 to implement the new income-tax credit for the donation of water rights. These costs are estimated at about \$24,000 for the first year the credit becomes available. This credit will require a new line to the various forms in the income tax system and data-entry costs to track the credit. Expenditures are based upon in-house programmers being sufficiently trained to perform the programming on the new income tax computer systems.

### **Departments Contacted**

Natural Resources

Revenue