

**FINAL  
FISCAL NOTE**

<b>Drafting Number:</b> LLS 14-0472	<b>Date:</b> July 21, 2014
<b>Prime Sponsor(s):</b> Sen. Schwartz Rep. Becker	<b>Bill Status:</b> Vetoed by the Governor
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**SHORT TITLE:** TRANSFER WATER EFFICIENCY SAVINGS TO INSTREAM USE

<b>Fiscal Impact Summary*</b>	<b>FY 2014-2015</b>	<b>FY 2015-2016</b>
<b>State Revenue</b>		
<b>State Expenditures</b>	Increased workload. See State Expenditures section.	
<b>FTE Position Change</b>		
<b>Appropriation Required:</b> None.		

\* This summary shows changes from current law under the bill for each fiscal year.

**Summary of Legislation**

The bill allows water efficiency savings to be transferred through a change of water right only to the Colorado Water Conservation Board (CWCB), and only for in-stream use, with the approval of a water judge, under the following circumstances:

- the CWCB has accepted the transfer of water efficiency savings for instream flow use;
- notice was given to water rights owners on the affected stream reach;
- the change will not materially injure decreed water rights;
- the change will not adversely affect Colorado's interstate compact or equitable apportionment decree entitlements or obligations; and
- the amount of water transferred is not more than the minimum amount necessary to add to stream flows to preserve the natural environment to a reasonable degree.

Water efficiency savings are defined as an amount of water, as determined in a water court proceeding, in water division 4, 5, 6, or 7 that is not consumed under existing practices by which ditch seepage, surface run-off, return flow, or tail-water return will be reduced as a result of structural improvements that increase the efficiency of water storage, diversion, conveyance, application, or use practices associated with a water right.

Water efficiency savings can also be derived from water rights that are used solely for agricultural irrigation or stock watering purposes. Water efficiency savings does not include water derived from the eradication of phreatophytes or any portion of historic water diversions that were not decreed or that were determined by a water judge to not be reasonably efficient. A water judge may include decree conditions to allow the water right to return to the original owner if the water efficiency measures are discontinued.

Finally, the CWCB can accept an instream flow right based on water efficiency savings notwithstanding existing law that requires acquired instream flow rights to be based on historic consumptive use, and water efficiency savings that have been changed under the bill are not subject to abandonment.

## **Background**

Colorado has seven water divisions based upon the drainage patterns of various rivers in Colorado. Each water division is staffed with a division engineer, a water judge, a water referee, and a water clerk. The water divisions affected by the bill are:

- Water Division 4 - Gunnison River Basin;
- Water Division 5 - Colorado River Basin;
- Water Division 6 - White River Basin; and
- Water Division 7 - San Juan River Basin.

## **State Expenditures**

Beginning in FY 2014-15, this bill is expected to result in increased workload for the Division of Water Resources (DWR) and the CWCB in the Department of Natural Resources, and for water courts in the Judicial Branch. These increases are described below.

***Department of Natural Resources, Division of Water Resources.*** This bill is expected to increase the workload for the DWR but, because the number of private water rights owners who will take advantage of this new provision is unknown, the increased workload cannot be determined. DWR staff are expected to develop criteria and guidelines to manage the process in an effective and consistent manner and to analyze the water efficiency savings prior to a change in right being approved. Because of the limited information currently available, this is not expected to require new appropriations.

***Department of Natural Resources, CWCB.*** The bill is expected to increase the number of changes of water rights for instream flows, which in turn increases both the workload and expenditures of the CWCB. As noted above, it is unknown how many private water rights owners will offer to sell water to the CWCB. If the bill results in more than five additional water acquisitions that require participation in water court change cases per year, the associated workload could require new appropriations to the CWCB for additional staff to process these cases. Also depending on private water owner participation, the CWCB may require additional funding for acquisition of water rights. If such an increase occurs, the fiscal note assumes this will be addressed during the annual budget process.

***Judicial Branch, Water Court.*** Although the legislation may increase the number of cases filed by the CWCB seeking to acquire a portion of an existing water right, the number of cases will be low enough that the water courts can address the minimal increase in workload within existing appropriations.

**Effective Date**

The bill was vetoed by the Governor on June 5, 2014.

**State and Local Government Contacts**

Natural Resources

Judicial

Law