

*Colorado Legislative Council Staff Fiscal Note*

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 15-0219      **Date:** February 19, 2015  
**Prime Sponsor(s):** Sen. Hodge; Sonnenberg      **Bill Status:** Senate Agriculture  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** QUANTIFY WATER RIGHTS HISTORICAL CONSUMPTIVE USE

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</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**

When a water judge decrees a change in water right, this bill requires that the measurement of the historical use of the water be based on the actual historical use of the water right for its designated purpose, over a representative study period. Under the bill, the study period:

- includes wet years, dry years, and average years;
- excludes years when the water right was not used for its decreed purposes; and
- need not include every historical year of the use of the subject water, or periods of nonuse of the water right.

A water judge cannot reconsider or requantify the historical consumptive use of a water right if it has been quantified in a previous change decree. However, to limit future consumptive use to the previously quantified historical consumptive use, the water judge may impose terms and conditions on the future use of the portion of the water right that is subject to the change.

**Background**

Consumptive use refers to the amount of water diverted from a river or stream that is actually used for a beneficial use that does not return to the river or stream. In farming, for example, irrigated crops will use a portion of the water applied to the field, some water will be lost to evaporation, and some will run off the field to be returned to the river or stream, or will percolate into an alluvial aquifer. The amount of water used by the irrigated crops represents the consumptive use while the amount returning to the stream, river, or aquifer are return flows.

**State Expenditures**

This bill may produce further grounds for litigation in some contested cases, which may result in more or longer hearings in the water courts in the Judicial Department. Not only are more statements of opposition expected to be filed, but these are expected to be litigated rather than settled. Because the quantification of historical consumptive use is a relatively small issue in the overall litigation of a typical water court case, this increase in workload is not expected to require additional appropriations. Likewise, any increase in workload for the review of water court applications by the Division of Water Resources in the Department of Natural Resources can be addressed within existing resources.

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State and Local Government Contacts**

Judicial Department

Natural Resources