

Colorado Legislative Council Staff Fiscal Note

**STATE
FISCAL IMPACT**

Drafting Number: LLS 15-0055
Prime Sponsor(s): Rep. Becker K.

Date: March 6, 2015
Bill Status: House Agriculture
Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: WATER EFFICIENCY SAVINGS INSTREAM USE PILOT

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	\$2,000	\$2,000
Cash Funds	2,000	2,000
State Expenditures	Workload Increase. See State Expenditures section.	
TABOR Set Aside	\$2,000	\$2,000
FTE Position Change		
Appropriation Required: None.		

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

Summary of Legislation

This bill allows the Colorado Water Conservation Board (CWCB) to acquire water rights for instream flow use on a pilot project basis without the need for a water court-decreed change of water right. These water rights represent the savings attained by implementing a limited number of nonconsumptive water efficiency pilot projects.

The CWCB may approve up to a total of 12 pilot projects and up to 5 pilot projects in any one water division, but only in divisions 4, 5, 6, and 7. In order to collect sufficient data, each pilot project should operate for at least 10 years. Under certain conditions, a pilot project may be extended for up to an additional 15 years. The CWCB cannot accept a pilot project application after July 1, 2020.

Water efficiency savings are defined as an amount of water, as determined by the State Engineer in consultation with the CWCB, in water division 4, 5, 6, or 7, by which ditch seepage, surface run-off, return flow, or tail-water return will be reduced as a result of structural improvements. These improvements may yield nonconsumptive water rights by increasing 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 that is not consumed under existing practices, and 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 the State Engineer in consultation with the CWCB to not be reasonably efficient.

The CWCB, in consultation with the State Engineer, and after consideration of public comment, will set criteria and guidelines for pilot project applications, including setting an application fee. The bill sets out the criteria for approval of pilot projects, including ways to resolve claims of injury to other water rights through the imposition of terms and conditions to prevent injury. Pilot projects can effect only a temporary change in the use of the water right, and the amount of water efficiency savings cannot be more than the minimum amount necessary to preserve the natural environment to a reasonable degree.

The approval or denial of a pilot project application may be appealed to the appropriate water judge. By January 1 of the year following each year that a pilot project is operated, a party may file comments with the CWCB concerning potential injury to that party's water rights as a result of the pilot project.

The CWCB will file a report by December 31, 2025, with the General Assembly that evaluates and makes recommendations on water efficiency savings for instream flow use. Pilot project authority is repealed from statute on September 1 of the year following the cessation of all pilot projects.

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 Revenue

This bill is expected to increase revenue to the CWCB in the Department of Natural Resources (DNR) by \$2,000 in both FY 2015-16 and FY 2016-17. Pilot project application fees will be deposited in the CWCB Construction Fund. The fiscal note assumes that four applications will be received each year and that applicants will pay a \$500 fee. The actual fee will be set by the CWCB in consultation with the State Engineer.

TABOR Impact

This bill increases state revenue from fees, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

Beginning in FY 2015-16, this bill is expected to increase workload for the Division of Water Resources (DWR) and the CWCB in the DNR, and for water courts in the Judicial Department. These increases are described below.

Department of Natural Resources - Department of Water Resources and the Colorado Water Conservation Board. This bill is expected to increase the workload for the DWR and the CWCB to:

- establish criteria and guidelines for the pilot program;
- review and evaluate pilot projects applications;
- participate in conferences with applicants;
- approve pilot projects;
- administer pilot projects;
- collect and respond to public comments and concerns; and
- create a final report.

Because the workload will be spread across multiple staff members from each division and is limited to a total of 12 projects, the bill does not require new appropriations. In addition, the CWCB may see an increase in water acquisitions to process. As long as no more than four project applications are received annually, CWCB will be able to address the workload with existing appropriations.

Judicial Department — Water Court. Although the legislation may increase both the number of cases filed by the CWCB seeking to acquire efficiency savings as a portion of an existing water right, and appeals of pilot project determinations, the number of cases will be low enough that affected water courts will address this minimal workload increase within existing appropriations.

Effective Date

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

State and Local Government Contacts

Natural Resources

Judicial Department