

Colorado Water Congress
State Affairs Committee Meeting
Report prepared by Bruce Whitehead
Sponsored by the Southwestern Water Conservation District

March 16, 2015 Water Legislation Report #11 (2015 Legislative Session)

The State Affairs Committee met on Monday, March 16, 2015 to discuss water legislation introduced during the 2015 Session. Discussion occurred, or action was taken on the bills included in the summary below. All legislation considered by the Water Congress is included in this week's report, and once the State Affairs Committee has taken action on a bill it will be moved to the status sheet the following week. The next meeting of the State Affairs Committee will be on Monday, March 23, 2015.

Other legislation introduced, or requested for discussion or action, since the last meeting: **SB 212 (Storm Water Facilities Not Injure Water Rights)**, **HB 1277 (Species Conservation Trust Fund Projects)** and **HB 1278 (Use Ag Water Rights to Cultivate Marijuana)**.

Proposed Legislation: The CWCB construction fund "*Projects Bill*" is yet to be introduced. Other possible legislation includes a bill that was discussed further at the Monday SA meeting *regarding drains and groundwater levels* related to housing developments and foundation work. The drain bill is the result of a denial action by the Ground Water Commission in a designated basin for the Meridian subdivision proposal, but the proposed legislation could be much broader and have a statewide impact. Proponents and Opponents of the bill that were parties to the case were given a chance to address the State Affairs Committee. There is another bill up for possible discussion by the SA Committee addressing "*Infrastructure Resistance and Solar Flare Legislation*." Initial concerns about the proposed bill are related to pipelines and irrigation systems being considered as "life-line infrastructure" which means it they could fall under jurisdiction of the PUC.

The format of each bill includes five columns and a following **Summary** cell. The 1st, 2nd, 4th, & 5th column each contain two information items as follows: 1st column has both the **Bill No.** and the **Short Title**. The 2nd column has both the **Sponsors** and the assigned **Committee**. The 3rd column contains only the **Concerning** statement, copied directly from the bill. The 4th column will show important **Amendments** and **Comments** provided by either me or John Porter. The 5th column shows both **When Introduced** and **CWC Action**. Once a bill no longer requires SA Comm action I will include it in a summary table, which will also show its progress. Until CWC takes action, the bill will remain in this format. I will however, **highlight in yellow** changes in any of

the cells, compared to the prior report. Once CWC has acted on a bill, it will be moved to the Status table, where its progress can be more easily monitored.

If you are aware of other entities that would like to receive these reports, please contact the Southwestern Water Conservation District office at 970-247-1302 with e-mail contact information.

Once introduced, copies of bills are available at www.leg.state.co.us. Additional info is available at the CWC web site: <http://www.cowatercongress.org/stateaffairs/>

FYI: Legislator Contact Information

Senator Ellen Roberts:	303-866-4884	ellen.roberts.senate@state.co.us
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Representative Don Coram:	303-866-2955	don.coram.house@state.co.us

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>SB 198</p> <p>Expand Fallowing Pilot Program Non-municipal Uses</p>	<p>S Crowder H Vigil</p> <p>Ag, Nat'l Resources, & Energy</p>	<p>CONCERNING MODIFICATIONS TO THE COLORADO WATER CONSERVATION BOARD'S FALLOWING PILOT PROGRAM, AND, IN CONNECTION THEREWITH, EXPANDING THE PROGRAM TO ALLOW AN AGRICULTURAL WATER RIGHT OWNER TO LEASE AN AGRICULTURAL WATER RIGHT FOR TEMPORARY AGRICULTURAL, ENVIRONMENTAL, INDUSTRIAL, OR RECREATIONAL USE.</p>	<p><i>Expanding uses for temporary agricultural fallowing in Arkansas Basin.</i></p> <p><i>Motion and vote of "no position".</i></p>	<p>03/03/15</p> <p>NO POSITION</p>
<p>SUMMARY: The current fallowing pilot program administered by the Colorado water conservation board (board) allows an agricultural water right owner to lease the agricultural water right to a municipality for up to 3 out of 10 years. During the period of nonagricultural use, the owner fallows the affected agricultural land. The bill expands the program to allow leases for temporary agricultural, environmental, industrial, or recreational use. The bill also reduces the time period for receiving comments on a pilot project application from 75 days to 60 days and requires the state engineer, within 15 days after a conference report has been filed or, if the board does not receive any comments on the pilot project application, within 30 days after the period of time for comments has expired, to review the application and make a determination on the issues of injury and compact compliance with respect to the application.</p>				
<p>SB 212</p> <p>Storm Water Facilities Not Injure Water Rights</p>	<p>S Sonnenberg H Winter</p> <p>Ag, Nat'l Resources, & Energy</p>	<p>CONCERNING A DETERMINATION THAT WATER DETENTION FACILITIES DESIGNED TO MITIGATE THE ADVERSE EFFECTS OF STORM WATER RUNOFF DO NOT MATERIALLY INJURE WATER RIGHTS.</p>		<p>03/12/15</p> <p>DISCUSSION</p>
<p>SUMMARY: Under current administrative practice, facilities that are designed to detain storm water for environmental and public safety purposes may be required to release water to avoid injury to water rights. The bill specifies that storm water detention and infiltration facilities and post-wildland fire facilities do not injure water rights. Water from these facilities cannot be put to beneficial use or form the basis for any claim to or for the use of water.</p> <p>A "storm water detention and infiltration facility" is defined as a facility that is owned or operated by a governmental entity or is subject to oversight by a governmental entity, designed and operated to continuously release or infiltrate at least 97% of all of the water from rainfall events that are equal to or less than a 5-year storm within 72 hours after the end of the rainfall event, and continuously release or infiltrate the water from rainfall events greater than a 5-year storm as quickly as practicable, but in no event over a period in excess of 120 hours. The facility must operate passively and cannot actively treat the storm water.</p> <p>A "post-wildland fire facility" means a facility that is not permanent; is located on, in, or adjacent to a nonperennial stream; is designed and operated solely for the mitigation of the impacts of wildland fire events; and is designed and operated to minimize the quantity of water detained and the duration of the detention of water to the levels necessitated by public safety and welfare. The person who installed or operated a post-wildland fire facility has to ensure that the facility is removed or rendered inoperable after the emergency conditions created by the wildfire no longer exist.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>HB 1159</p> <p>Instream Flow Incentive Tax Credit</p>	<p>H Arndt S Donovan</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING THE INSTREAM FLOW INCENTIVE TAX CREDIT FOR WATER RIGHTS HOLDERS.</p>	<p><i>A two-thirds majority in support as introduced was not achieved. A second motion to support with an amendment to strike "or improve" did not achieve a two-thirds majority either.</i></p> <p>Update 3/16, "or improve" stricken.</p>	<p>01/29/15</p> <p>NO POSITION</p>
<p>SUMMARY: In 2009, the general assembly enacted the instream flow incentive tax credit for water rights holders for 6 years. When enacted, the tax credit included a trigger that made the credit unavailable if total general fund revenues for a particular fiscal year would not be sufficient to grow the total state general fund appropriations by 6% over the previous fiscal year's appropriations.</p> <p>The bill extends the instream flow incentive tax credit for water rights holders for an additional 5 income tax years. The bill also makes a change to the requirements of the donation, specifying that the donation may either <i>preserve or improve</i> the environment, rather than requiring that the donation only preserve the environment as originally enacted. Additionally, the bill removes the application of the trigger to the tax credit.</p>				
<p>HB 1178</p> <p>Emergency Well Pumping Damaging High Groundwater</p>	<p>H Saine, Humphrey S Marble</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING THE STATE ENGINEER'S AUTHORITY TO ALLOW WELL USERS TO LOWER THE WATER TABLE IN AN AREA THAT THE STATE ENGINEER DETERMINES IS EXPERIENCING DAMAGING HIGH GROUNDWATER LEVELS.</p>	<p><i>Bill has been amended significantly by a strike below amendment, and may be requested for reconsideration by SA next week on 3/16. Bill as introduced was opposed by SA.</i></p> <p>Motion to reconsider, position changed to Support with amendments 3/16.</p>	<p>1/29/15</p> <p>SUPPORT (with amendments)</p>
<p>SUMMARY: The bill authorizes the state engineer, for the purpose of lowering the water table in an area that the state engineer determines is experiencing damaging high groundwater levels, to rescind an order or to decline to order a well user in the area to discontinue an out-of-priority diversion or to replace an amount of water otherwise required by an augmentation plan or a substitute water supply plan.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>HB 1249</p> <p>Recodify Water Pollution Control Fees</p>	<p>H Becker S Hodge</p> <p>Finance</p>	<p>CONCERNING AMENDMENTS TO THE FEES ASSOCIATED WITH WATER POLLUTION CONTROL.</p>	<p><i>No vote, monitor bill.</i></p>	<p>02/27/2015</p> <p>MONITOR</p>
<p>SUMMARY: The bill amends the statutory fee schedule that the department of public health and environment charges for the discharge of pollutants into state waters. The bill recodifies the existing statutory fee structure and does not change the amounts of the existing fees, but does reorganize the existing fees into 5 new sectors. The bill introduces 3 new fees for regulated activities associated with the application of pesticides, the costs associated with reviewing requests for certifications under section 401 of the "Clean Water Act", and an application fee for new permits which will be credited toward the annual permit fee. The bill also extends the existing statutory expiration dates for permits associated with animal feeding operations.</p>				
<p>HB 1252</p> <p>Extend Healthy Rivers Fund Voluntary Contribution</p>	<p>H Mitsch Bush S Sonnenberg</p> <p>Finance</p>	<p>CONCERNING AN EXTENSION OF THE NUMBER OF YEARS THE INDIVIDUAL INCOME TAX RETURN INCLUDES A VOLUNTARY CONTRIBUTION DESIGNATION FOR THE COLORADO HEALTHY RIVERS FUND.</p>		<p>03/02/2015</p> <p>SUPPORT</p>
<p>SUMMARY: The bill extends the number of years the individual income tax return form includes a voluntary contribution designation for the Colorado healthy rivers fund.</p>				
<p>HB 1259</p> <p>Residential Precipitation Collection Rain Barrels</p>	<p>H Esgar, Danielson S Merrifield</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING THE USE OF RAIN BARRELS TO COLLECT PRECIPITATION FROM A RESIDENTIAL ROOFTOP FOR NONPOTABLE OUTDOOR USES.</p>	<p><i>2/3 majority not achieved for position.</i></p>	<p>03/04/2015</p> <p>NO POSITION</p>
<p>SUMMARY: Section 1 of the bill allows the collection of precipitation from a residential rooftop if:</p> <ul style="list-style-type: none"> • A maximum of 2 rain barrels with a combined storage capacity of 100 gallons or less are used; • Precipitation is collected from the rooftop of a building that is used primarily as a single-family residence or a multi-family residence with 4 or fewer units; • The collected precipitation is used on the residential property on which the precipitation is collected; and • The collected precipitation is applied to outdoor purposes such as lawn irrigation and gardening. <p>Section 1 of the bill also requires the state engineer, to the extent practicable within existing resources, to provide information on the permitted use of rain barrels on the state engineer's web site. Section 2 requires the department of public health and environment, to the extent practicable within existing resources, to develop best practices for nonpotable usage of collected precipitation and vector control and to post any best practices developed on the department's web site. Section 3 prevents a homeowners' association from prohibiting a unit owner from using rain barrels for precipitation collection.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>HB 1277</p> <p>Species Conservation Trust Fund Projects</p>	<p>H Vigil S Sonnenberg</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING MEASURES TO EFFECTUATE THE CONSERVATION OF NATIVE SPECIES IN COLORADO, AND, IN CONNECTION THEREWITH, MAKING APPROPRIATIONS FROM THE SPECIES CONSERVATION TRUST FUND FOR PURPOSES RECOMMENDED BY THE DEPARTMENT OF NATURAL RESOURCES.</p>		<p>03/09/2015</p> <p>DISCUSSION</p>
<p>SUMMARY: The bill appropriates money from the species conservation trust fund for programs submitted by the executive director of the department of natural resources that are designed to conserve native species that have been listed as threatened or endangered under state or federal law or that are candidate species or are likely to become candidate species as determined by the United States fish and wildlife service.</p>				
<p>HB 1278</p> <p>Use Ag Water Rights To Cultivate Marijuana</p>	<p>H Vigil S N/A</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING THE USE OF AGRICULTURAL WATER RIGHTS TO CULTIVATE MARIJUANA WITHOUT THE NEED FOR A CHANGE OF WATER RIGHT.</p>	<p><i>State Affairs will propose amendment to bill sponsor. Scheduled for possible action on 3/23.</i></p>	<p>03/09/2015</p> <p>DISCUSSION</p>
<p>SUMMARY: The bill specifies that using a water right that has been decreed for agricultural irrigation purposes for the cultivation of marijuana at a retail or medical marijuana cultivation facility is not a change of a water right if the use of the water is required for the cultivation of marijuana as contemplated or required by the facility's license.</p>				