

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

January 20, 2015 Water Legislation Report # 3 (2015 Legislative Session)

The State Affairs Committee met on Tuesday, January 20, 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 First Regular Session of the Seventieth General Assembly convened on January 7, 2015, and the Water Resources Review Committee bills were introduced in the first few days of the Session. The next meeting of the State Affairs Committee will be on Monday, January 26, 2015.

Other legislation introduced, or requested for discussion or action since the last meeting include: **SB 055** – (Return of Water from Tail Ditch), **SB 064** – (Application of State Water Law to Federal Agencies), **SB 075** – (Exempt Well Irrigate Up to 1 Acre Commercial Crops), **SB 084** – (Water Right Partial Historical Consumptive Use), **HB 1057** – (The Statewide Initiative Process), **HB 1093** – (Exceptions Efficient Plumbing Fixture Requirements), and **House Joint Resolution 1006** – (Water Projects Revolving Fund Eligibility Lists).

Proposed Legislation: A one-page summary and two-page technical sheet regarding the capture and temporary retention of storm-water has been circulated and discussed by the State Affairs Committee. Work continues on the proposed legislation, and it is not known when the bill will be introduced. It was reported by the Department of Natural Resources that the Agriculture Efficiency Bill (**HB G**) will be introduced in the next week or two. Other possible legislation previously discussed by the State Affairs Committee for 2015 include: legislation allowing “*for profit*” water entities to form Water Authorities to qualify for funding from the Colorado Water Resources Authority (CWR&PDA). A draft of this bill has not been made available yet, so it is not included in the summary provided below.

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, I will move it 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
Representative J. Paul Brown:	303-866-2914	jpaul.brown.house@state.co.us
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 17 Appellate Process for Decisions About Groundwater</p>	<p>S Jones H Coram Judiciary</p>	<p>CONCERNING THE APPELLATE PROCESS GOVERNING A DISTRICT COURT'S REVIEW OF FINAL AGENCY ACTIONS CONCERNING GROUNDWATER</p>	<p><i>Water Resources Review Committee.</i> <i>Work continues on amendment.</i></p>	<p>01/07/15 DISCUSSION</p>
<p>SUMMARY: Water Resources Review Committee. Decisions or actions of the ground water commission (commission) or the state engineer regarding groundwater are appealed to a district court. Under current statute, the evidence that a district court may consider on appeal when reviewing a decision or action of the commission or state engineer is not limited to the evidence presented to the commission or state engineer. Therefore, unlike appeals from other state agencies' decisions or actions under the "State Administrative Procedure Act", a party appealing a decision or action of the commission or state engineer may present new evidence on appeal that was never considered by the commission or state engineer.</p> <p>The bill limits the evidence that a district court may consider when reviewing a decision or action of the commission or the state engineer on appeal to the evidence presented to the commission or the state engineer.</p> <p>\</p>				
<p>SB 55 Return Of Water From Tail Ditch</p>	<p>S Hodge Ag, Nat'l Resources, & Energy</p>	<p>CONCERNING STATE ENGINEER ADMINISTRATION OF TAILWATER DITCHES</p>		<p>01/12/15 DISCUSSION</p>
<p>SUMMARY: The bill permits a person to use a tail ditch to return variable amounts of water to a stream. The state engineer shall not require the delivery of a minimum amount of water to the stream, except as required by a court decree.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>SB 64</p> <p>Application Of State Water Law To Federal Agencies</p>	<p>S Sonnenberg</p> <p>Ag, Nat'l Resources, & Energy</p>	<p>CONCERNING LIMITS THAT THE BASIC TENETS OF COLORADO WATER LAW PLACE ON THE ABILITY OF CERTAIN FEDERAL AGENCIES TO IMPOSE CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE FOR PERMISSION TO USE FEDERAL LAND</p>		<p>01/14/15</p> <p>DISCUSSION</p>
<p>SUMMARY: The bill states basic tenets of Colorado water law concerning water as a transferable property right, acknowledges that the federal government has maintained deference to state law with respect to water rights, and prohibits the United States forest service (USFS) and the federal bureau of land management (bureau) from placing conditions on special use permits for, or rights-of-way on, federal land that:</p> <ul style="list-style-type: none"> • Require the owner of a water right or a conditional water right to assign the USFS or the bureau partial or joint ownership of the water right; • Impose limitations on the alienability of the owner's water right; or • Impose restrictions that give the USFS or the bureau full or partial control over the use and operation of the water right. <p>The bill also prohibits the state and division engineers from cooperating with the USFS or the bureau in enforcing or administering any such conditions on special use permits for, or rights-of-way on, federal land or from expending any public funds related to the enforcement or administration of any such conditions.</p>				
<p>SB 75</p> <p>Exempt Well Irrigate Up To 1 Acre Commercial Crops</p>	<p>S Grantham H Lundeen</p> <p>Ag, Nat'l Resources, & Energy</p>	<p>CONCERNING THE ABILITY TO IRRIGATE NOT MORE THAN ONE ACRE OF CROPS FROM A WELL</p>		<p>01/14/15</p> <p>DISCUSSION</p>
<p>SUMMARY: Current law exempts certain types of water wells from the prior appropriation system, including the irrigation of not over one acre of home gardens and lawns. The bill adds an exemption for water wells that do not exceed 15 gallons per minute of production and are used for the irrigation of not over one acre of commercial crops.</p>				
<p>SB 84</p> <p>Water Right Partial Historical Consumptive Use</p>	<p>S Hodge</p> <p>Ag, Nat'l Resources, & Energy</p>	<p>CONCERNING A PROHIBITION ON REDUCING THE QUANTIFICATION OF A WATER RIGHT'S ACTUAL HISTORICAL USE IN A CHANGE OF WATER RIGHT</p>		<p>01/14/15</p> <p>DISCUSSION</p>
<p>SUMMARY: A water right may be used on one or more parcels of land and may be changed with regard to only some of the parcels. When a water judge decrees a change of a previously unchanged portion of a water right, the bill prohibits the water judge from reducing the actual historical consumptive use of that portion of the water right based on previously decreed changes of use involving another portion of the same water right used on other parcels of land.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
HB 1013 House Bill 12-1278 Recommendations	H Coram S Sonnenberg/Hodge Ag, Livestock, & Nat'l Resources	CONCERNING THE IMPLEMENTATION OF RECOMMENDATION NUMBER ONE SET FORTH IN THE STUDY OF THE SOUTH PLATTE RIVER ALLUVIAL AQUIFER PREPARED BY THE COLORADO WATER INSTITUTE PURSUANT TO HOUSE BILL 12-1278.	<i>Water Resources Review Committee.</i> Oppose Section 2 of the bill (SEO approval of operation and design of recharge structure) Neutral position on Section 1.	01/07/15 OPPOSE (Section 2)
<p>SUMMARY: Section 1 requires the Colorado water conservation board, in consultation with the state engineer, to administer 2 pilot projects in the areas of Gilcrest/LaSalle and Sterling to evaluate 2 alternative methods of lowering the water table in areas that are experiencing damaging high groundwater levels. Section 2 of the bill authorizes the state engineer to review an augmentation plan submitted to a water court if it includes the construction of a recharge structure. The water court may approve the augmentation plan only if the state engineer either approves the operation and design of the proposed recharge structure after having determined that the application is not likely to cause injury or proposes changes to the operation and design of the proposed recharge structure as terms and conditions of the application.</p>				
HB 1016 Promote Precipitation Harvesting Pilot Projects	H Coram S Sonnenberg Ag, Livestock, & Nat'l Resources	CONCERNING INCENTIVES FOR PRECIPITATION HARVESTING	<i>Water Resources Review Committee.</i> Oppose legislation as introduced & request Ag Committee to lay the bill over for further work on amendments.	01/07/15 OPPOSE (As Introduced)
<p>SUMMARY: Water Resources Review Committee. In 2009, the general assembly authorized up to 10 precipitation harvesting pilot projects for new real estate developments of residential housing or mixed uses. Only one project has been approved. To encourage more projects, the bill:</p> <ul style="list-style-type: none"> - Includes the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property as potential pilot projects; - Directs the Colorado water conservation board to update its approval criteria and guidelines, including regionally applicable factors that sponsors can use for substitute water supply and augmentation plans that specify the amount of evapotranspiration of preexisting natural vegetative cover, to which the state engineer and water judges must give presumptive effect, subject to rebuttal; - Reduces the amount of water needed for a project's temporary substitute water supply plan and permanent augmentation plan by the amount of historic natural depletion to the waters of the state, if any, caused by the preexisting natural vegetative cover and evaporation on the surface of the area that will be, or that has been, made impermeable as part of the pilot project; and - Specifies that a project's temporary retention of storm water for the purpose of improving water quality is not subject to an order of the state or division engineers if the retention complies with the board's criteria and guidelines and the applicable requirements of the state's water quality laws. 				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>HB 1038</p> <p>Flexible Water Markets</p>	<p>H Arndt S N/A</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING FLEXIBLE WATER MARKETS</p>	<p><i>Support with amendments.</i></p>	<p>01/07/15</p> <p>SUPPORT</p>
<p>SUMMARY: Currently, water court proceedings governing an application to change the beneficial use of an irrigation water right require the applicant to designate a specific alternative beneficial use identified at the time of the application. The bill creates a more flexible change-in-use system by allowing an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the permanent dry-up of irrigated lands to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied.</p> <p>Section 1 of the bill defines "flex use" to mean an application of the fully consumptive portion of water that has been subject to a water right change-in-use proceeding to any beneficial use. It also redefines "appropriation" to exclude flex use from the anti-speculation doctrine.</p> <p>Section 2 describes the procedures for obtaining a flex use change-in-use decree, and section 3 describes the procedures for obtaining a flex use substitute water supply plan.</p>				
<p>HB 1057</p> <p>The Statewide Initiative Process</p>	<p>H Court, DelGrosso S Sonnenberg, Hodge</p> <p>State, Veterans & Military Affairs</p>	<p>CONCERNING THE PROCESS FOR A STATEWIDE INITIATIVE TO BE PLACED ON A BALLOT</p>		<p>01/07/15</p> <p>DISCUSSION</p>
<p>SUMMARY: Under current law, the director of research of the legislative council of the general assembly (director) is required to prepare a fiscal impact statement for each initiative in the ballot information booklet (blue book). This fiscal impact statement includes an abstract. The bill requires the director to prepare an initial fiscal impact statement for each initiative submitted to the title board and to further summarize the abstract into a 2-sentence fiscal impact summary. When preparing the initial fiscal impact statement, the director is required to consider the proponents' fiscal impact estimate, which the proponents are strongly encouraged to submit along with the initiative for review and comment.</p> <p>The abstract from the initial fiscal impact statement must be printed at the beginning of an initiative petition section that is circulated for signatures and the fiscal impact summary must be printed on each succeeding section page. The director is also required to post the initial fiscal impact statement on legislative council staff's web site. When preparing the fiscal impact statement for the blue book, the director is permitted to update the initial fiscal impact statement.</p> <p>The bill also requires the designated representatives of the initiative proponents to appear at all review and comment meetings. If either designated representative fails to appear at a review and comment meeting, the initiative is considered withdrawn, but the proponents are permitted to resubmit the initiative for another review and comment meeting.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
HB 1093 Exceptions Efficient Plumbing Fixture Requirements	H Dore State, Veterans & Military Affairs	CONCERNING LIMITATIONS ON REQUIREMENTS FOR THE USE OF WATER-EFFICIENT PLUMBING FIXTURES	<i>Removes indoor efficiency requirements from legislation passed last year (SB14-103)</i>	01/14/15 DISCUSSION
<p>SUMMARY: Section 1 of the bill repeals a prohibition that would go into effect on September 1, 2016, that disallows the sale of certain plumbing fixtures unless they are water-efficient plumbing fixtures. The prohibition would apply to lavatory faucets, shower heads, flushing urinals, tank-type toilets, and tank-type water closets.</p> <p>Sections 2, 3, and 4 maintain prior legislative enactments concerning water-efficient indoor plumbing fixtures that would otherwise be repealed on September 1, 2016. These prior enactments concern water-efficient indoor plumbing fixtures in 3 contexts:</p> <ul style="list-style-type: none"> • Builders of new single-family detached residences must offer the buyers toilets, faucets, and shower heads that meet the current standards of the federal environmental protection agency's WaterSense program; • New construction or renovation of state-owned buildings must include the installation of water-efficient plumbing devices; except that tank-type water closets and flushometer toilets need not meet water efficiency standards as stringent as the current WaterSense standards. Section 3 adds an exception for the installation of water-efficient plumbing devices in new construction or renovation of state-owned buildings where the public entity responsible for the new construction or renovation determines that installation of water-efficient plumbing devices would be detrimental to public health or safety. • New construction and renovation of residential structures and office, commercial, or industrial buildings must meet water-efficiency standards; except that a waiver from the water-efficiency requirements may be obtained if the local administrative authority issuing a building permit determines either that compliance with the water efficiency standards would be detrimental to public health or safety or that water-efficient fixtures and fittings would cause a sewer hydraulic gradient insufficient to handle reduced water flows. <p>Section 5 makes a conforming amendment.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>HJR 1006</p> <p>Water Projects Revolving Fund Eligibility Lists</p>	<p>H Vigil S Sonnenberg</p> <p>Ag, Livestock, & Nat'l Resources</p>	<p>CONCERNING APPROVAL OF WATER PROJECT REVOLVING FUND ELIGIBILITY LISTS ADMINISTERED BY THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT AUTHORITY</p>		<p>1/15/15</p> <p>DISCUSSION</p>
<p>SUMMARY: This resolution modifies the eligibility lists for the Colorado Water Resources and Power Development Authority’s Drinking Water Project Revolving Fund, which provides financial assistance to proposed projects to preserve, protect, conserve and develop Colorado’s water resources. The modifications to the eligibility lists include updated provider or project names, additional providers, and the deletion of projects no longer needed or already completed.</p>				
<p>HB G</p> <p>Water Efficiency Savings Instream Use Pilot</p>	<p>H Becker S N/A</p> <p>N/A</p>	<p>CONCERNING AN AUTHORIZATION OF PILOT PROJECTS FOR THE VOLUNTARY TRANSFER OF WATER EFFICIENCY SAVINGS TO THE COLORADO WATER CONSERVATION BOARD FOR INSTREAM USE PURPOSES IN WATER DIVISIONS THAT INCLUDE LANDS WEST OF THE CONTINENTAL DIVIDE.</p>	<p><i>Department Natural Resources pilot alternative to SB14-23 vetoed by Governor Hickenlooper.</i></p>	<p>N/A</p> <p>DISCUSSION</p>
<p>SUMMARY: <i>The bill summary has not been drafted for this legislation.</i> Unofficial summary; The bill would allow the Colorado Water Conservation Board to acquire non-consumptive agricultural water efficiency savings for instream flow use as pilot projects approved by the Board in consultation with the State Engineer without the need for a water court decreed change of water right. The pilot projects are limited to Water Divisions 4, 5, 6, 7, and the Board can approve up to a total of twelve pilot projects with up to five projects in any one Division.</p>				
<p>-In order to collect sufficient data, the projects should operate for at least five years, and may operate for up to ten years. Applications will not be accepted after July 1, 2020, and each pilot project must cease operations within ten years of approval and after the conclusion of any water court appeals.</p>				
<p>-After at least five years of operation of a pilot project, the Board may acquire water efficiency savings as a water right or interest in water that was not historically consumed, and may file an application for a water court-decreed change of water rights for instream use of water efficiency savings.</p>				