

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

**April 4, 2016 Water Legislation Report #12 (2016 Legislative Session)**

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The State Affairs Committee met on Monday, April 4, 2016 to review bills as introduced or amended and other proposed legislation. The Second Regular Session of the Seventieth General Assembly convened on January 13, 2016, and is scheduled to adjourn on May 11, 2016. The next meeting of the State Affairs Committee is scheduled for **Monday, April 11, 2016.**

Other legislation introduced, or requested for discussion or action since the last meeting: **SB 174 (CWCB Construction Fund Project)** and **HB 1413 (Refinance Water Pollution Control Program).**

Proposed Legislation: **Work on budget “Long Bill” in the House continued last week.** There has been a 70% reduction in Severance Tax revenues. It is anticipated that there will additional cuts needed of \$60 million to \$100 million on top of \$70 million in cuts already proposed to balance the budget. **The budget process will move to the Senate this week.** It is likely that a bill will be introduced by two individual members of the JBC (Joint Budget Committee) that would **place a cap of \$180 million on severance tax revenues** that are currently split between the Department of Natural Resources (CWCB) and the Department of Local Affairs, and any **amount in excess of the cap would be placed into a reserve fund used for water infrastructure.** The bill may require a Statutory Referendum to “de-tabor” which does not require a 2/3 majority to pass.

Discussion of Bills with CWC Position: An update was provided on **HB 1283 (Water Loss Audit Report Standards)**, which Water Congress has taken a position of Opposition on. The bill was heard in the House Ag Committee on March 7 with extended testimony. A vote on the bill was postponed by the Chairman, of the House Ag Committee. At the SA meeting on Monday April 4, the bill’s sponsor, Representative K.C. Becker, announced she did not have the votes to get it out of the House Ag Committee, but she would like to continue with the discussion this summer during the Interim Water Committee. The legislation was **PI’d (Postponed Indefinitely)** Monday afternoon.

An update was also provided on **HB 1392 (Water Banks Administration)** and the work done by the State Affairs sub-committee. A request had been made by the SWCD and the Colorado River District to exempt the West Slope (Divisions 4, 5, 6, and 7) from the legislation, since it is believed the bill is premature for the ongoing efforts of a Colorado River Water Bank. The bill is calendared for the House Ag Committee on April 11, and the proponents and bill sponsor announced that the bill would be **PI’d (Postponed)**

**Indefinitely**). The proponents announced they will continue working on the bill, and may request that the water bank issue be discussed by the Interim Water Committee this summer.

**Bills for Possible Reconsideration**: A request was made for reconsideration of the Water Congress position on two bills, which were included on the agenda for the State Affairs Committee on Monday April 4. It takes a 2/3 majority to reconsider a position on a bill, and after discussion, another vote of 2/3 majority to amend or change a position. A motion was made to reconsider the conditions included on the position of support on **HB 1109** (Application of State Water Law to Federal Agencies). Negotiations on language regarding any authority the federal government might have for by-pass flows were successful, and the Colorado Attorney General's Office approved language that did not "Confirm or Deny" the federal authority. The State Affairs Committee agreed to **Support the legislation without conditions**.

Representative Saine had asked that **HB 1314** (Treat Preexisting Groundwater Depletions as Replaced) be added to the agenda for possible reconsideration, but there was not a motion for reconsideration made by any member of the State Affairs Committee. **The position will remain unchanged as Opposed**.

**Ballot Initiatives**: **Initiative 40** and **Initiative 63** are similar to ballot measures that have been previously proposed, and are partly driven by Oil/Gas production and hydro-fracking. Initiative 40 is focused on local jurisdiction and local sovereignty. On Monday March 14, the State Affairs Committee recommended a position of **Opposition** to Initiative 40 to the Water Congress Board. Initiative 63 is similar to past attempts at an "Environmental Rights Measure," but has had the Public Trust issue removed from the language. The Titles have been approved for both of these Initiatives. These proposed measures could have impacts to water rights and water providers in the state.

There have also been a number of Initiatives that have had the Title set that would increase the requirements for ballot initiatives in Colorado. **Initiative 87** would require preparation of a Fiscal Impact Statement for proposed Initiatives, **Initiatives 93 and 94** are specific to Constitutional Amendments and would increase the number of votes needed for a Constitutional Amendment from 50% to 55%. **Initiatives 95, 96 and 97** are specific to Constitutional Amendments and would not change the total number of signatures required but would require that the signatures include 2% of the registered voters in each Senate District. The State Affairs Committee will consider making a position recommendation to the Water Congress Board on Initiatives 87, and 93-97 at the next meeting on March 14. Although the State Affairs Committee is supportive of the concepts to make it more difficult to change Colorado's Constitution, the Committee decided to wait to make a recommendation to the Water Congress Board on these Initiatives until they know which version will be pursued by the proponents. More information can on proposed ballot initiatives can be found on the Colorado Water Stewardship Project web page at <http://cowaterstewardship.com/>

Click on the following links to read the full ballot initiative language:

[Initiative 40](#) (Oppose)  
[Initiative 63](#)

[Initiative 87](#)  
[Initiative 95](#)

[Initiative 93](#)  
[Initiative 96](#)

[Initiative 94](#)  
[Initiative 97](#)

The format of each bill includes five columns and a following **Summary** cell. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, & 5<sup>th</sup> column each contain two information items as follows: 1<sup>st</sup> column has both the **Bill No.** and the **Short Title**. The 2<sup>nd</sup> column has both the **Sponsors** and the assigned **Committee**. The 3<sup>rd</sup> column contains only the **Concerning** statement, copied directly from the bill. The 4<sup>th</sup> column will show important **Amendments** and **Comments** provided by either me or John Porter. The 5<sup>th</sup> column shows both **When Introduced**, **CWC Action**, and **SWCD Position**. 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](http://www.leg.state.co.us).

Additional info is available at the CWC web site: <http://www.cowatercongress.org/stateaffairs/>

FYI: Legislator Contact Information

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Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action / SWCD Position
<p><b>HB16 – 1382</b></p> <p><b>Divert Water Piscatorial Aesthetic Beneficial Use</b></p>	<p><b>H Becker</b></p> <p><b>Ag, Livestock &amp; Natural Resources</b></p>	<p>CONCERNING THE CONFIRMATION OF CERTAIN USES OF WATER AS BEING BENEFICIAL</p>	<p><i>The bill was PI'd in House Ag on Monday 4/4. No position taken by SA since bill was PI'd.</i></p>	<p><b>03/16/16</b></p> <p><b>NO POSITION (Bill PI'd)</b></p> <p><b>SWCD Position: Support with removal of aesthetic use</b></p>
<p><b>SUMMARY:</b> In the case of St. Jude's Co. v. Roaring Fork Club, LLC, 351 P.3d 442 (Colo. 2015) (St. Jude's Co.), the Colorado Supreme Court held that diversions of water for aesthetic, recreational, and piscatorial purposes, without impoundment, are not beneficial uses of water under Colorado water law.</p> <p>The bill <b>supersedes</b> the court's holding in St. Jude's Co. by:</p> <ul style="list-style-type: none"> <li>*diversion or release from storage of water for any purpose for which an appropriation is lawfully made, including piscatorial, recreational, and aesthetic purposes; and</li> <li>*Confirming that decrees entered before, on, or after the effective date of the bill for such beneficial uses shall be given full effect and enforced according to their specific terms.</li> </ul>				
<p><b>HB16 – 1413</b></p> <p><b>Refinance Water Pollution Control Program</b></p>	<p><b>H Rankin</b> <b>S Grantham</b></p> <p><b>Appropriations</b></p>	<p>CONCERNING THE FINANCING OF THE WATER POLLUTION CONTROL PROGRAM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.</p>		<p><b>03/28/16</b></p> <p><b>DISCUSSION</b></p> <p><b>SWCD Position: N/A</b></p>
<p><b>SUMMARY: Joint Budget Committee.</b> Currently, the water pollution control statute categorizes the various sources that pay fees pursuant to the statute within different sectors, specifies the amount of each fee that the subcategories within each sector pay, and credits all fees from all sectors to the water quality control fund.</p> <p><b>Section 1</b> of the bill <b>repeals</b> this fund, <b>creates</b> a separate cash fund for each of the sectors (commerce and industry; construction; pesticides; municipal separate storm sewer system; public and private utilities; and water quality certifications), and <b>allocates</b> the fees from each sector to that sector's cash fund. If the money derived from a particular sector is inadequate to cover the direct and indirect costs of the department of public health and environment in administering that sector, the general assembly may appropriate money from any of the funds for the department's direct and indirect costs in administering that sector. The department will conduct a stakeholder process regarding the appropriate and necessary fees that each subcategory of each sector should pay to enable each sector to be adequately funded by fees collected from that sector, and the department will then submit a legislative proposal to the joint budget committee by November 1, 2016, concerning its conclusions regarding the fees. The department must annually report to the joint budget committee, accounting separately for its expenditures by fund source and revenues by fund and sector source.</p> <p><b>Section 2 directs</b> the state treasurer to transfer \$1,208,007 of the excess uncommitted reserve of the water quality improvement fund to the general fund on July 1, 2016.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action / SWCD Position
<p><b>SB16 – 167</b></p> <p><b>Severance Tax Operational Fund Reserve Reduction</b></p>	<p><b>S Grantham H Rankin</b></p> <p><b>Appropriations</b></p>	<p>CONCERNING A REDUCTION IN THE SEVERANCE TAX OPERATIONAL FUND RESERVE FOR THE 2016-17 FISCAL YEAR.</p>	<p><i>Joint Budget Committee bill would help offset negative funding impact to Tier II programs (including WSRA) by \$2.98 million.</i></p>	<p><b>03/21/16</b></p> <p><b>SUPPORT</b></p> <p><b>SWCD Position: Support</b></p>

**SUMMARY:** For a given fiscal year, the reserve in the severance tax operational fund is equal to the sum of the operating appropriations for the Tier I programs and 15% of the Tier II transfers. For the 2016-17 fiscal year, the bill reduces the portion of the reserve that is based on the Tier I programs by \$2.98 million.

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action / SWCD Position
<b>SB16 – 174</b>  <b>CWCB Construction Fund Project</b>	<b>S Sonnenberg H Vigil</b>  <b>Ag, Natural Resources &amp; Energy</b>	<b>CONCERNING THE FUNDING OF COLORADO WATER CONSERVATION BOARD PROJECTS, AND, IN CONNECTION THEREWITH, MAKING APPROPRIATIONS.</b>	<i>Amendment made by bill sponsor and supported by Senator Roberts, to clarify intent of ALP purchase and use in Section 14.</i>	<b>03/28/16</b>  <b>DISCUSSION</b>  <b>SWCD Position: Support</b>
<p><b>SUMMARY:</b> The bill <b>appropriates</b> the following amounts from the Colorado water conservation board (CWCB) construction fund to the CWCB or the division of water resources for the following projects:</p> <ul style="list-style-type: none"> <li>• \$380,000 for continuation of the satellite monitoring system maintenance (section 1 of the bill);</li> <li>• \$500,000 for continuation of the Colorado floodplain map modernization program (section 2);</li> <li>• \$1,500,000 for continuation of the watershed restoration program (section 3);</li> <li>• \$175,000 for continuation of the weather modification program (section 4);</li> <li>• \$150,000 for the board to support the Colorado Mesonet, a spatially coherent network of weather stations reporting in near real-time via major data portals (section 5);</li> <li>• \$300,000 for the water forecasting partnership project (section 6);</li> <li>• \$2,500,000 for a Bear Creek reservoir reallocation study (section 7);</li> <li>• \$200,000 for an underground storage study (section 8);</li> <li>• \$1,000,000 for continuation of the statewide water supply initiative (section 9); and</li> <li>• \$200,000 for continuation of the Windy Gap reservoir bypass channel project (section 10).</li> </ul> <p>The bill <b>directs</b> the state treasurer to transfer the following amounts from the CWCB construction fund:</p> <ul style="list-style-type: none"> <li>• Up to \$500,000 to the flood and drought response fund (section 11); and</li> <li>• \$600,000 to the litigation fund (section 12).</li> </ul> <p>Current law prevents the CWCB from participating in domestic water treatment and distribution systems projects; <b>section 13 changes</b> this prohibition to water treatment facilities.</p> <p><b>Section 14 gives</b> the CWCB a variety of powers to fully utilize the state's water allocation in the Animas-La Plata project, directs the state treasurer to credit money received pursuant to the exercise of those powers to the CWCB construction fund, and continuously appropriates this money to the board for this purpose.</p> <p><b>Section 15 transfers</b> the following amounts from the severance tax perpetual base fund to the CWCB construction fund:</p> <ul style="list-style-type: none"> <li>• \$200,000 for the Windy Gap reservoir bypass channel project;</li> <li>• \$1,500,000 for the watershed restoration program,</li> <li>• \$2,500,000 for the Bear Creek reservoir reallocation study,</li> <li>• \$1,000,000 for the statewide water supply initiative; and</li> <li>• On each July 1, \$5,000,000 to fund studies, programs, or projects to implement the state water plan.</li> </ul>				