

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

February 29, 2016 Water Legislation Report #7 (2016 Legislative Session)

The State Affairs Committee met on Monday, February 29, 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, March 7, 2016.**

Other legislation introduced, or requested for discussion or action since the last meeting: **None.**

Proposed Legislation: The State Affairs Committee also discussed other possible legislation for 2016 “*concerning an alternative mechanism for creating sub-districts of the Colorado Water Conservation District*”, and a water banking bill.

Discussion of Bills with CWC Position: The State Affairs Committee took a position of support on HB 1109 (Application of State Water Law to Federal Agencies) at a previous meeting. Amendments have been proposed to the legislation by environmental interests, and the Attorney General’s Office has raised concerns about implied rights to reserved water rights or to impose by-pass flows by the Federal Government. A strike below version of the bill was circulated, and the State Affairs Committee unanimously agreed to reconsider the position on the bill. After much discussion, the Committee agreed to continue to “**support the legislation if Section 4 of the revised bill is removed**”. Section 4 is the disputed language regarding any authority that Federal agencies “might have” to impose by-pass flows in a federal permit evaluation.

Ballot Initiatives: To date, 113 measures have been introduced and are going through the Initiative process. A few of the later proposals could “raise the bar” for the Initiative process, and change future signature petition requirements. A brief update on Ballot **Initiative 40** and **Initiative 63** was provided at the meeting. Both of these proposed Initiatives 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. 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. Both of these proposed measures could have impacts to water rights and water providers in the state. More information can on proposed ballot initiatives can be found on the Colorado Water Stewardship Project web page at <http://cowaterstewardship.com/>

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
HB16 – 1109 Application Of State Water Law To Federal Agencies	H Becker/Becker S Sonnenberg/Donnovan Ag, Livestock & Natural Resources	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.	<i>Concerns raised by AG's office on language regarding Federal Reserved Rights, and By-Pass flows. A strike below version of the bill was circulated, and SA Committee reconsidered position to Support if By-Pass language is removed.</i>	1/20/16 SUPPORT (If by-pass language removed)
<p>SUMMARY: Section 1 of the bill states basic tenets of Colorado water law concerning water as a transferable property right.</p> <p>Section 2 specifies that the United States forest service (USFS) or the federal bureau of land management (bureau) shall establish federal water rights in accordance with the federal reserved water rights doctrine or Colorado water law. Section 2 prohibits the state and division engineers from enforcing or administering any USFS or bureau effort that:</p> <ul style="list-style-type: none"> • Requires a full or partial transfer of ownership in a water right to the USFS or the bureau; • Restricts the use or alienability of the water right; or • Requires a third party that supplies water to a federal special use permit holder to supply the water for a set period of time or in a set amount. <p>Sections 1 and 2 clarify that the bill does not impact any federal government authority to impose bypass flow requirements in connection with a special use permit or other authorization.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
HB16 – 1228 Ag Protection Water Right Transfer Mechanism	H Arndt/Becker S Donovan Ag, Livestock & Natural Resources	CONCERNING AN ALTERNATIVE TRANSFER MECHANISM FOR WATER RIGHTS THAT PROTECTS THE AGRICULTURAL USE FOR WHICH A WATER RIGHT WAS ORIGINALLY DECREED WHILE PERMITTING RENEWABLE ONE- YEAR TRANSFERS OF A PORTION OF THE WATER SUBJECT TO THE WATER RIGHT.	<i>SA Subcommittee established to work on bill with Sponsor proponents. After three meetings, the Subcommittee recommended changes to the Sponsors, and recommended a position of support to SA with those changes. The Committee delayed action until 3/7 to review the amended legislation.</i>	2/4/16 DISCUSSION
<p>SUMMARY: Currently, water court proceedings governing an application to change the beneficial use of an agricultural water right require the applicant to designate a specific beneficial use identified at the time of the application. The bill authorizes an owner of an agricultural water right to seek a change-in-use decree in water court to allow the transfer of up to 50% of the water subject to the water right to any beneficial use for renewable one-year periods, without designating the specific beneficial use, if the owner has obtained substitute water supply plan approval and the following conditions are met:</p> <ul style="list-style-type: none"> • In accordance with rules established by the state engineer, the state engineer must approve a one-year lease, loan, or exchange transferring a portion of the water subject to the water right; • The owner of the water right may transfer up to 50% of the historical consumptive use portion of the water right; • The remaining portion of the water subject to the water right must continue to be used for agricultural purposes; • The water right must be protected by the owner's participation in a conservation program or water banking program or establishment of a conservation easement; • Ownership must remain with the owner who applied for the change-in-use decree; • The owner shall not transfer water subject to the water right outside of the water division with jurisdiction over the location of historical consumptive use; and • The transferable portion of the water subject to the water right must be delivered to a point of diversion that is subject to an existing water court decree. 				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
HB16 – 1256 South Platte Water Storage Study	H Brown S Sonnenberg Ag, Livestock & Natural Resources	CONCERNING A STUDY REGARDING THE CREATION OF ADDITIONAL WATER STORAGE IN THE SOUTH PLATTE RIVER BASIN.	<i>Representative Brown is discussing amendments regarding funding of the study with CWCB staff. He will also introduce an amendment in regards to environmental benefits and multiple purposes.</i>	2/8/16 SUPPORT
<p>SUMMARY: Section 1 of the bill requires the Colorado water conservation board (board), in collaboration with the state engineer, to conduct or commission a hydrology study of the South Platte river basin to determine, for each of the previous 20 years, the amount of water that has been delivered to Nebraska from the river in excess of the amount required under the South Platte river compact. The study must also include a list of locations that have been identified as possible sites for the construction of a reservoir along the mainstem and tributaries of the South Platte river between Greeley, Colorado, and Julesburg, Colorado. For each listed location, the study must include information on the amount of water that could have been stored in a reservoir at the site, a list of any property that the federal bureau of reclamation or another government agency has purchased for construction of the site, an estimate of the cost to construct a reservoir at the site, and a cost-benefit analysis for constructing a reservoir at the site. The board, in collaboration with the state engineer, is required to provide a report summarizing the study to the committees of reference in the house of representatives and the senate that have jurisdiction over natural resources matters.</p> <p>Section 2 transfers \$250,000 from the severance tax perpetual base fund to the Colorado water conservation board construction fund on July 1, 2016.</p>				
HB16 – 1283 Water Loss Audit Report Performance Standards	H Becker Ag, Livestock & Natural Resources	CONCERNING MEASURES TO DECREASE WATER LOSS BY DOMESTIC WATER SUPPLIERS	<i>Representative Becker still working on amendments, and asked SA to delay taking position until 3/7. Concerns were raised about AWWA requirements, and need to hire consultant.</i>	2/19/16 DISCUSSION
<p>SUMMARY: Section 2 of the bill requires that, on or before June 30, 2018, and on or before June 30 of each year thereafter, each covered entity must submit to the Colorado water conservation board (board) a completed and validated water loss audit report pursuant to guidelines that the board must adopt by January 1, 2018. A "covered entity" is a public entity that supplies at least 2,000 acre-feet of water per year to its customers. The board may make grants from the water efficiency grant program cash fund to provide water loss audit report validation assistance to covered entities. No earlier than January 1, 2020, and no later than July 1, 2021, the board must adopt guidelines establishing a score that a covered entity's validated audit report should attain. Beginning September 1, 2020, the board and the Colorado water resources and power development authority may consider whether a covered entity has submitted a required audit report in deciding whether to release financial assistance to the covered entity (section 1). Section 3 transfers \$150,000 per year for 3 years from the drinking water revolving fund to the water efficiency grant program cash fund.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p>SB16 – 097</p> <p>Use Mineral Severance Revenue For Local Govts</p>	<p>S Scott H Coram</p> <p>Ag, Natural Resources & Energy</p>	<p>CONCERNING MEASURES TO ENSURE THAT REVENUE RELATED TO THE SEVERANCE OF MINERALS IN THE STATE IS USED IN AREAS MOST IMPACTED BY THE SEVERANCE.</p>	<p><i>Bill would protect use of funds for Local Government, but could put increased pressure on DNR/CWCB severance tax funds. Sections 5 and 6 have been stricken from the bill.</i></p>	<p>1/29/16</p> <p>MONITOR</p>
<p>SUMMARY: The bill prohibits transfers to the general fund from the following funds (mineral severance fund): Higher education federal mineral lease revenues fund (section 2); Higher education maintenance and reserve fund (section 2); Local government permanent fund (section 4); Local government mineral impact fund (section 4); or Local government severance tax fund (section 5).</p> <p>In addition, the governor is prohibited from restricting the money in each of these funds from being used as required by law for the purpose of saving the restricted money for a future transfer to the general fund. For purposes of preparing the annual general appropriation act, section 1 of the bill limits the joint budget committee's ability to use money in the mineral severance fund for any purpose that is not authorized by law or that does not benefit the political subdivisions impacted by the severance of minerals, and section 3 imposes the same limitation on the governor when he or she proposes an annual executive budget. Section 1 also restricts the joint budget committee from introducing legislation to waive this limitation.</p> <p>Section 5 changes the allocation of the money in the local government severance tax fund. The proportion of the fund used for direct distributions is increased from 30% to 60%, and the proportion of the fund used for direct distributions is decreased for grants from 70% to 40%. In addition, the executive director is restricted to only giving a grant to a political subdivision that received more than \$200,000 from its direct distribution in the prior state fiscal year.</p>				
<p>SB16 – 128</p> <p>Amend Augmentation & Substitute Water Supply Plans</p>	<p>S Hodge H Arndt</p> <p>Ag, Natural Resources & Energy</p>	<p>CONCERNING THE ABILITY TO AMEND LIMITED TERMS THAT GOVERN THE OPERATION OF A WATER RIGHT WITHOUT REOPENING ALL TERMS GOVERNING THE PREVIOUS APPROVAL OF THE OPERATION.</p>	<p><i>Discussion occurred, and concerns were raised about the bill being very broad. Amendments are likely.</i></p>	<p>2/16/16</p> <p>OPPOSE</p>
<p>SUMMARY: The bill allows for amendments to decreed plans for augmentation (sections 1 and 2 of the bill) and approved substitute water supply plans (section 3), or specific portions thereof, without reopening the entire decree or approval.</p>				