

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

**March 7, 2016 Water Legislation Report #8 (2016 Legislative Session)**

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The State Affairs Committee met on Monday, March 7, 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 14, 2016.**

Other legislation introduced, or requested for discussion or action since the last meeting: **HB 1313 (Authority of Local Govt Master Plan Include Water Plan Goal)**, **HB 1314 (Treat Preexisting Groundwater Depletions Replaced)**, **HB 1337 (Appellate Process for Decisions about Groundwater)**, and **SB 145 (Colorado River District Sub-district Formation)**

Proposed Legislation: The State Affairs Committee also discussed a possible 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. **Update:** *This bill generated considerable debate in the House Ag Committee on March 7. Amendments were introduced to try and address the by-pass flow language, which passed and then were reconsidered after Representative K.C. Becker threatened to PI the bill (Postpone Indefinitely) which would have killed the bill. The Committee voted to move the bill as introduced to the floor of the House for more debate and possible amendments. Additional work and/or amendments may be necessary in the Senate if the bill passes the House without addressing the by-pass issue.*

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. **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. 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. 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 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 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](http://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	<a href="mailto:ellen.roberts.senate@state.co.us">ellen.roberts.senate@state.co.us</a>
Representative J. Paul Brown:	303-866-2914	<a href="mailto:jpaul.brown.house@state.co.us">jpaul.brown.house@state.co.us</a>
Representative Don Coram:	303-866-2955	<a href="mailto:don.coram.house@state.co.us">don.coram.house@state.co.us</a>

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<b>HB16 – 1228</b>  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..</i>	2/4/16  <b>SUPPORT</b>
<p><b>SUMMARY:</b> 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 <b>authorizes</b> 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"> <li>• 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;</li> <li>• The owner of the water right may transfer up to 50% of the historical consumptive use portion of the water right;</li> <li>• The remaining portion of the water subject to the water right must continue to be used for agricultural purposes;</li> <li>• 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;</li> <li>• Ownership must remain with the owner who applied for the change-in-use decree;</li> <li>• 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.</li> </ul>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<p><b>HB16 – 1283</b></p> <p>Water Loss Audit Report Performance Standards</p>	<p><b>H Becker</b></p> <p>Ag, Livestock &amp; Natural Resources</p>	<p>CONCERNING MEASURES TO DECREASE WATER LOSS BY DOMESTIC WATER SUPPLIERS</p>	<p><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></p>	<p>2/19/16</p> <p><b>OPPOSE</b></p>
<p><b>SUMMARY:</b> Section 2 of the bill <b>requires</b> 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 <b>required</b> audit report in deciding whether to release financial assistance to the covered entity (section 1). Section 3 <b>transfers</b> \$150,000 per year for 3 years from the drinking water revolving fund to the water efficiency grant program cash fund.</p>				
<p><b>HB16 – 1313</b></p> <p>Authority of Local Govt Master Plan Include Water Plan Goal</p>	<p><b>H Arndt/Coram</b></p> <p>Ag, Livestock &amp; Natural Resources</p>	<p>CONCERNING THE AUTHORITY OF LOCAL GOVERNMENT MASTER PLANS TO INCLUDE POLICIES TO IMPLEMENT STATE WATER PLAN GOALS AS A CONDITION OF DEVELOPMENT APPROVALS.</p>		<p>03/02/16</p> <p><b>DISCUSSION</b></p>
<p><b>SUMMARY:</b> The bill <b>authorizes</b> local government master plans to include goals specified in the state water plan and to include policies that condition development approvals on implementation of those goals.</p>				
<p><b>HB16 – 1314</b></p> <p>Treat Preexisting Groundwater Depletions Replaced</p>	<p><b>H Saine/Humphrey S Marble</b></p> <p>Ag, Livestock &amp; Natural Resources</p>	<p>CONCERNING TREATMENT OF RISING GROUNDWATER LEVELS AS REPLACING GROUNDWATER DEPLETIONS IN WATER DIVISION 1.</p>		<p>03/02/16</p> <p><b>DISCUSSION</b></p>
<p><b>SUMMARY:</b> Due to rising groundwater levels since 2006, the bill specifies that the state engineer and water judges <b>must</b> treat all out-of-priority groundwater depletions from agricultural wells occurring in water districts 1 through 6 and 64 in water division 1 that accrued between March 15, 1974, and December 31, 2014, as having been fully replaced.</p>				

Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action
<b>HB16 – 1337</b>  <b>Appellate Process For Decisions About Groundwater</b>	<b>H Vigil/Coram</b>  <b>Ag, Livestock &amp; Natural Resources</b>	<b>CONCERNING THE APPELLATE PROCESS GOVERNING A DISTRICT COURT'S REVIEW OF FINAL AGENCY ACTIONS CONCERNING GROUNDWATER.</b>		<b>03/03/16</b>  <b>DISCUSSION</b>
<p><b>SUMMARY:</b> Under current law, the decisions or actions of the ground water commission (commission) or the state engineer regarding groundwater are appealed to a district court and the evidence that the district court may consider 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 <b>limits</b> 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>				
<b>SB16 – 145</b>  <b>Colorado River District Subdistrict Formation</b>	<b>S Baumgardner/ Donovan H Mitsch Bush/Willett</b>  <b>Ag, Natural Resources &amp; Energy</b>	<b>CONCERNING AN ALTERNATIVE MECHANISM FOR CREATING A SUBDISTRICT OF THE COLORADO RIVER WATER CONSERVATION DISTRICT.</b>		<b>03/04/16</b>  <b>DISCUSSION</b>
<p><b>SUMMARY:</b> The Colorado river water conservation district's (district) 1937 organic act provides a mechanism for the creation of a subdistrict within the 15-county district that requires a petition signed by 50% of the property owners of the proposed subdistrict to be presented to, and approved by, a court which may then declare the subdistrict formed. Because of changes in the amount and type of property ownership over the years, the 50% signature threshold is no longer practical.</p> <p>The bill <b>provides</b> an alternative mechanism to petition for the organization of a subdistrict of the district. Following initial approval of the board of directors, including unanimous approval of the directors representing the geographic area that would be covered by the proposed subdistrict, the petition must include the signatures of the lesser of 10% or 200 electors of the geographic area covered by the proposed subdistrict. The petition must then be presented to a court for approval at a hearing, and, upon approval, is put to a vote at a districtwide election. If a majority of the votes are in favor of the formation of the proposed subdistrict, the court shall declare the subdistrict formed.</p>				