

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

March 18, 2019 Water Legislation Report #10 (2019 Legislative Session)

The State Affairs Committee of the Colorado Water Congress met on March 18 to discuss water-related legislation. There was discussion of possible amendments to [HB19-1218 \(Loaned Water for Instream Flows to Improve Environment\)](#). The amendments would remove the provision that would allow a temporary instream flow loan on reaches without a decreed instream flow, clarify that a new application to the CWCB is needed upon 10-year renewal of the loan, and potentially limit the number of consecutive years a temporary ISF loan could be used. The language for these proposed changes has not be drafted nor approved by the sponsor. HB19-1218 is up for consideration by the House Energy and Environment Committee on March 25.

The State Affairs Committee acted to support [HB19-1006 \(Wildfire Mitigation Wildland-Urban Interface Areas\)](#). The Committee also voted to submit a letter to the House Energy & Environment Committee regarding [SB19-181 \(Protect Public Welfare Oil and Gas Operations\)](#), specifically the legislation's potential consequences to severance tax revenues, which supply funding for state water projects. The Committee also acted to support [SB19-184 \(Authority Colorado Water Institute Study Blockchain Technology\)](#), and postponed action on [SB19-186 \(Expand Agricultural Chemical Management Program Protect Surface Water\)](#).

Colorado Water Trust is working with Representative Arndt to put forward a bill clarifying CWCB's authority for instream flow augmentation plan. The proposed language is not yet available.

All the bills SWCD is currently supporting, along with recent reports, can be found at <https://swwcd.org/resources/legislative-updates/>. The table below provides a detailed summary of water-related legislation introduced during the current session. 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 SWCD staff. The 5th 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. Additional info is available at the CWC web site: <http://www.cowatercongress.org/stateaffairs/>

FYI: Legislator Contact Information

Senator Don Coram (SD 6):	303-866-4884	don.coram.senate@state.co.us
Representative Barbara McLachlan (HD 59):	303-866-2914	barbara.mclachlan.house@state.co.us
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Bill No. Title	Sponsors Committee	Concerning	Amendments Comments	When Introduced CWC Action / SWCD Position
HB19 1006 Wildfire Mitigation Wildland-urban Interface Areas	H McLachlan, Carver S Fields Rural Affairs & Ag	CONCERNING MEASURES TO MITIGATE THE EFFECTS OF WILDFIRES WITHIN WILDLAND-URBAN INTERFACE AREAS, AND, IN CONNECTION THEREWITH, CREATING A STATE GRANT PROGRAM TO PROMOTE FOREST MANAGEMENT FUELS REDUCTION PROJECTS IN SUCH AREAS	This bill will provide three million dollars in funding toward WUI forest management.	01/04/2019 SUPPORT SWCD Position: DISCUSSION
<p>SUMMARY: Wildfire Matters Review Committee. The bill creates a state grant program to be administered by the Colorado state forest service (forest service) to fund proactive forest management fuels reduction projects to reduce the impacts to life, property, and critical infrastructure caused by wildfires. To be eligible for a grant award, a grant recipient must be any one of a group of individual landowners as specified in the bill whose real property that is the subject of a grant application is located within a land area that is covered by a community wildfire protection plan. The bill specifies requirements pertaining to the evaluation of grant proposals. The forest service is to select the proposals that will receive funding, administer the grant program, and develop procedures by which applicants are to apply for grants. The bill imposes a monetary limit on the amount of a grant to be awarded and also requires a grant applicant to demonstrate an available amount of matching funds to be awarded a grant. The bill creates the forest management fuels reduction projects grant program cash fund in the state treasury. The bill requires the forest service to report annually to the general assembly on the number, location, and benefits of all projects for which a grant award is made.</p>				

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<p>HB19 1218</p> <p><u>Loaned Water For Instream Flows to Improve Environment</u></p>	<p>H Roberts</p> <p>Rural Affairs & Agriculture</p>	<p>CONCERNING THE COLORADO WATER CONSERVATION BOARD'S AUTHORITY TO USE WATER THAT A WATER RIGHT OWNER VOLUNTARILY LOANS TO THE BOARD FOR INSTREAM FLOW PURPOSES.</p>	<p><i>Possible amendments removing the provision that would allow a temporary ISF loan on a non-decreed reach, clarifying that a new application is needed upon renewal, and limiting the number of consecutive years a temporary ISF loan could be used. This bill is up for SA Committee action on March 25, the day it is calendared for the House Energy & Environment Committee.</i></p>	<p>03/04/2019</p> <p>DISCUSSION</p> <p>SWCD Position: DISCUSSION</p>
<p>SUMMARY: Under current law, the Colorado Water Conservation Board (board), subject to procedural requirements established to prevent injury to water rights or decreed conditional water rights, may use loaned water for instream flows if the loaned water is used for preserving the natural environment of a stream reach that is subject to a decreed instream flow water right held by the board.</p> <p>The bill expands the number of years within a 10-year period that a loan may be exercised from 3 years to 5 years and allows a loan to be renewed for up to 2 additional 10-year periods.</p> <p>The bill also expands the board's ability to use loaned water for instream flows to allow loans to:</p> <ul style="list-style-type: none"> • Improve the natural environment to a reasonable degree pursuant to a decreed instream flow water right held by the board; or • Preserve or improve the natural environment to a reasonable degree for a stream reach for which the board does not hold a decreed instream flow water right. <p>In considering whether to accept one of the new types of loans authorized by the bill, the board must evaluate the proposed loan based on a biological analysis performed by the division of parks and wildlife. The board is required to promulgate rules regarding the necessary steps for reviewing and accepting such a loan.</p>				
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<p>SB19 181</p> <p><u>Protect Public Welfare Oil And Gas Operations</u></p>	<p>S Fenberg H Becker</p> <p>Natural Resources & Environment</p>	<p>CONCERNING ADDITIONAL PUBLIC WELFARE PROTECTIONS REGARDING THE CONDUCT OF OIL AND GAS OPERATIONS.</p>	<p><i>Water Congress submitted a short letter to the House Energy & Environment Committee explaining Water Congress' concerns for the unintended consequences the bill might have in decreasing severance tax revenues, and therefore state water funding.</i></p>	<p>03/08/2019</p> <p>DISCUSSION</p> <p>SWCD Position: DISCUSSION</p>
<p>SUMMARY: The bill enhances local governments' ability to protect public health, safety, and welfare and the environment by clarifying, reinforcing, and establishing their regulatory authority over the surface impacts of oil and gas development. Current law specifies that local governments have so-called "House Bill</p>				

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<p>1041" powers, which are a type of land use authority over oil and gas mineral extraction areas, only if the Colorado oil and gas conservation commission (commission) has identified a specific area for designation. Sections 1 and 2 of the bill repeal that limitation.</p> <p>Section 3 directs the air quality control commission to adopt rules to:</p> <ul style="list-style-type: none"> • Require an oil and gas operator of an oil and gas facility to install continuous emission monitoring equipment at the facility to monitor for hazardous air pollutants as specified by the commission by rule, as well as for methane and volatile organic compounds; and • Minimize emissions of methane and other hydrocarbons and nitrogen oxides from the entire oil and gas fuel cycle. <p>Section 4 clarifies that local governments have land use authority to regulate the siting of oil and gas locations and to regulate land use and surface impacts, including the ability to inspect oil and gas facilities; impose fines for leaks, spills, and emissions; and impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.</p> <p>Section 5 repeals an exemption for oil and gas production from counties' authority to regulate noise. The remaining substantive sections of the bill amend the "Oil and Gas Conservation Act" (Act). The legislative declaration for the Act states that it is in the public interest to "foster" the development of oil and gas resources in a manner "consistent" with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources; this has been construed to impose a balancing test between fostering oil and gas development and protecting the public health, safety, and welfare.</p> <p>Section 6 states that the public interest is to "regulate" oil and gas development to "protect" those values. Currently, the Act defines "waste" to include a diminution in the quantity of oil or gas that ultimately may be produced.</p> <p>Section 7 excludes from that definition the nonproduction of oil or gas as necessary to protect public health, safety, and welfare or the environment. Section 7 also repeals the requirement that the commission take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts to wildlife resources. The 9-member commission currently includes 3 members who must have substantial experience in the oil and gas industry and one member who must have training or experience in environmental or wildlife protection.</p> <p>Section 8 reduces the number of industry members to one and requires one member with training or substantial experience in wildlife protection; one member with training or substantial experience in environmental protection; one member with training or substantial experience in soil conservation or reclamation; one member who is an active agricultural producer or a royalty owner; and one member with training or substantial experience in public health.</p> <p>Section 9 requires the director of the commission to hire up to 2 deputy directors. The Act currently specifies that the commission has exclusive authority relating to the conservation of oil or gas.</p> <p>Section 10 clarifies that nothing in the Act alters, impairs, or negates the authority of:</p> <ul style="list-style-type: none"> • The air quality control commission to regulate the air pollution associated with oil and gas operations; • The water quality control commission to regulate the discharge of water pollutants from oil and gas operations; 				

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<ul style="list-style-type: none"> • The state board of health to regulate the disposal of naturally occurring radioactive materials and technologically enhanced naturally occurring radioactive materials from oil and gas operations; • The solid and hazardous waste commission to regulate the disposal of hazardous waste and exploration and production waste from oil and gas operations; or • A local government to regulate land use related to oil and gas operations, including specifically the siting of an oil and gas location. Currently, an operator first gets a permit from the commission to drill one or more wells within a drilling unit, which is located within a defined area, and then notifies the applicable local government of the proposed development and seeks any necessary local government approval. <p>Section 11 requires operators to file, with the application for a permit to drill, either: Proof that the operator has already filed an application with the affected local government to approve the siting of the proposed oil and gas location and of the local government's disposition of the application; or proof that the affected local government does not regulate the siting of oil and gas locations. Section 11 also specifies that the commission and the director shall not issue a permit until the commission has promulgated every rule required to be adopted by oil and gas bills enacted in 2019 and the rules have become effective; except that the director may issue a permit if the director determines that the permit does not require additional analysis to ensure the protection of public health, safety, and welfare or the environment or require additional local government or other state agency consultation. Pursuant to commission rule, an operator may submit a statewide blanket financial assurance of \$60,000 for fewer than 100 wells or \$100,000 for 100 or more wells. Section 11 directs the commission to adopt rules that require financial assurance sufficient to provide adequate coverage for all applicable requirements of the Act. Current law allows the commission to set numerous fees used to administer the Act and sets a \$200 or \$100 cap on the fees. Section 11 eliminates the caps and requires the commission to set a permit application fee in an amount sufficient to recover the commission's reasonably foreseeable direct and indirect costs in conducting the analysis necessary to assure that permitted operations will be conducted in compliance with all applicable requirements of the Act. Current law gives the commission the authority to regulate oil and gas operations so as to prevent and mitigate "significant" adverse environmental impacts to the extent necessary to protect public health, safety, and welfare, taking into consideration cost-effectiveness and technical feasibility. Section 11 requires the commission to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations. Section 11 also requires the commission to adopt rules that require alternate location analyses for oil and gas facilities that are proposed to be located near populated areas and that evaluate and address the cumulative impacts of oil and gas development. Finally, section 11 directs the commission to promulgate rules to:</p> <ul style="list-style-type: none"> • Ensure proper wellhead integrity of all oil and gas production wells, including the use of nondestructive testing of well joints and requiring certification of oil and gas field welders; • Allow public disclosure of flowline information and to evaluate and determine when a deactivated flowline must be inspected before being reactivated; and • Evaluate and determine when inactive and shut-in wells must be inspected before being put into production or used for injection. Current law authorizes "forced" or "statutory" pooling, a process by which "any interested person", typically an operator who has at least one lease or royalty interest, may apply to the commission for an order to pool oil and gas resources located within a particularly identified drilling unit. After giving notice to interested parties and holding a hearing, the commission can adopt a pooling order to require an owner of oil and gas resources within the drilling unit who has not consented to the application (nonconsenting owner) to allow the operator to produce the oil and gas within the drilling unit notwithstanding the owner's lack of consent. <p>Section 12 requires that the owners of more than 50% of the mineral interests to be pooled must have joined in the application for a pooling order and that the application include either: Proof that the applicant has already filed an application with the affected local government to approve the siting of the proposed oil and gas facilities and of the local government's disposition of the application; or proof that the affected local government does not regulate the siting of oil and gas</p>				

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<p>facilities. Section 12 also specifies that the operator cannot use the surface owned by a nonconsenting owner without permission from the nonconsenting owner. Current law also sets the royalty that a nonconsenting owner is entitled to receive at 12.5% of the full royalty rate until the consenting owners have been fully reimbursed (out of the remaining 87.5% of the nonconsenting owner's royalty) for their costs. Section 12 raises a nonconsenting owner's royalty rate during this pay-back period from 12.5% to 15% and makes a corresponding reduction of the portion of the nonconsenting owner's royalty from which the consenting owners' costs are paid. Current law requires the commission to ensure that the 2-year average of the unobligated portion of the oil and gas conservation and environmental response fund does not exceed \$6 million and that there is an adequate balance in the environmental response account in the fund to address environmental response needs.</p> <p>Section 13 directs the commission to ensure that the unobligated portion of the fund does not exceed 50% of total appropriations from the fund for the upcoming fiscal year and that there is an adequate balance in the account to support the operations of the commission and to address environmental response needs.</p> <p>Section 15 amends preemption law by specifying that both state agencies and local governments have authority to regulate oil and gas operations and establishes that, where there is a conflict in the exercise of that authority, the more protective standard as to health, safety, and welfare, the environment, and wildlife resources controls.</p>				
<p>SB19 184</p> <p><u>Authority Colorado Water Institute Study Blockchain Technology</u></p>	<p>S Tate H Arndt, Catlin</p> <p><u>Agriculture & Natural Resources</u></p>	<p>CONCERNING A GRANT OF AUTHORITY TO THE COLORADO WATER INSTITUTE TO STUDY POTENTIAL USES OF BLOCKCHAIN TECHNOLOGY.</p>		<p>03/05/2019</p> <p>SUPPORT</p> <p>SWCD Position: DISCUSSION</p>
<p>SUMMARY: The bill directs the Colorado water institute at Colorado state university to:</p> <ul style="list-style-type: none"> • Study the potential uses of blockchain technology to manage a database of water rights, to facilitate the establishment or operation of water markets or water banks, and for any other useful purpose in the administration of the institute's powers and duties; and • Report the results to the general assembly. 				

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SB19 186 Expand Agricultural Chemical Management Program Protect Surface Water	S Donovan H Coram, Arndt Agriculture & Natural Resources	CONCERNING THE EXPANSION OF AGRICULTURAL CHEMICAL MANAGEMENT PLANS TO PROTECT SURFACE WATER.	<i>Farm Bureau has asked a delay of consideration of this bill from the Committee this week, to further review the term "state waters." SA Committee action was postponed until March 25.</i>	03/05/2019 POSTPONED SWCD Position: DISCUSSION
<p>SUMMARY: Under current law, the commissioner of agriculture is responsible for the management of the use of agricultural chemicals to protect groundwater, and the commissioner adopts rules establishing agricultural management plans for this purpose. The bill expands the scope of the commissioner's agricultural management plans to include the protection of state waters, which includes surface and subsurface waters.</p>				