

COLORADO WATER CONSERVATION BOARD

Department of Natural Resources

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HB 07-1012 -- CONCERNING PROTECTION OF WATER RIGHTS LOANED TO THE CWCB FOR INSTREAM FLOW USE

Background

The instream flow and natural lake level program was established in 1973. The CWCB may “appropriate ... or acquire such waters of natural streams and lakes as may be required to preserve the natural environment to a reasonable degree.”

Several changes have been made to the original enabling statute, including providing the CWCB with the authority to accept a loan of a water right.

In 2003, HB 03-1320 (codified at section 37-83-105, C.R.S.) became law. It allows the temporary acquisition of water rights for instream flow purposes. The new law allowed water right owners in basins or counties where the Governor declared a drought or other emergency to convey water rights to the CWCB for instream flow use for up to 120 days. The law also established procedures for State and Division Engineer approval of temporary instream flow use of loaned water rights.

In 2005, the General Assembly passed HB 05-1039, amending section 37-83-105(2) to remove the drought declaration requirement for loans, limit the exercise of a loan to no more than three years in any ten year period, and provide a process for parties to comment on potential injury after each year a loan is exercised.

A change in the law is now needed to protect water rights owners that choose to loan water in future water court proceedings.

What the Bill does:

- Amends section 37-83-105(2) to exclude all periods of time during which a loaned water right is used by the CWCB for instream flow purposes from any historic consumptive use analysis of the loaned water right required under any water court proceeding.
- Amends section 37-92-103(2)(b) to designate participation in a loan of water to the Board for instream flow use as a circumstance under which no intent to abandon the loaned water right shall be found.
- Assures water rights owners interested in loaning water for instream flow uses that the loan will not result in a reduction of the historic consumptive use credited to the loaned water right in any future water court proceeding to change that water right.
- Assures water rights owners interested in loaning water to the CWCB that the owner's nonuse of a water right during the period of the loan shall not give rise to a presumption of abandonment of that water right.