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Nonpartisan Services for Colorado's Legislature

HB 20-1157

FISCAL NOTE

Drafting Number: LLS 20-0076 Date: February 6, 2020
Prime Sponsors: Rep. Roberts; Will Sen. Donovan Bill Status: House Rural Affairs
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Bill Topic: LOANED WATER FOR INSTREAM FLOWS TO IMPROVE ENVIRONMENT

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

The bill expands the allowable use of loaned water in the Instream Flow Program. The bill increases state workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

Under current law, the Colorado Water Conservation Board (CWCB) in the Department of Natural Resources (DNR) may use loaned water for instream flows if the loaned water is used in a stream reach with an existing decreed instream flow water right held by the CWCB. The bill makes the following modifications to this program:

- increases the number of years within a ten-year period that a renewable loan may be exercised from three to five, except that no more than three years consecutively are permitted;
allows a loan to be renewed by the State Engineer in the DNR for up to two additional ten-year periods; and
expands the CWCB's ability to use loaned water to not only preserve but improve the natural environment to a reasonable degree.

The CWCB is required to promulgate rules that give preference to loans of stored water over loans of direct flow water, and require a biological analysis from Colorado Parks and Wildlife in DNR concerning the extent to which the loan will improve the natural environment.

The bill modifies the time frames by which the State Engineer must accept public comment in making determinations of injury to a water right by a loan. The filing fee collected by the State Engineer for a loan is increased from \$100 to \$300. The State Engineer's decision to approve or deny a loan may be appealed to a water judge, who must hear the matter on an expedited basis. In these instances, the applicant has the burden of proof that the loaned water right does not cause injury to other water rights.

## State Revenue

The bill minimally increases revenue to the DNR by increasing the water loan application filing fee by \$200. DNR receives about one such application per year. Revenue is deposited into the Water Resources Cash Fund, and is subject to state revenue limits established in TABOR.

## State Expenditures

This bill will minimally increase workload for the DNR and Judicial Department as explained below.

**Department of Natural Resources.** Workload will increase for the CWCB to update its rules and potentially to process additional loans of water. CPW currently performs biological analyses for permanent instream flow acquisitions; the bill is expected to increase the volume of biological analyses required for loans. The workload can be accomplished within existing appropriations.

**Judicial Department.** Decisions made by the CWCB may create work for Colorado water courts through an increase in the number of water rights applications and appeals of State Engineer decisions. This increase is expected to be minimal and can be accomplished within existing court appropriations.

## Effective Date

The bill takes effect August 5, 2020, if the General Assembly adjourns on May 6, 2020, as scheduled, and no referendum petition is filed. It applies to conduct occurring on or after the bill's effective date.

## State and Local Government Contacts

Agriculture

Judicial

Natural Resources