



SB18-170

SHORT TITLE: Reservoir Releases for Fish and Wildlife Mitigation

LONG TITLE: Concerning a water court process by which an owner of a storage water right allowing water to be stored in new reservoir capacity may release water into an identified stream reach in a manner that protects the water releases while complying with mitigation measures identified in a fish and wildlife mitigation plan approved by the Colorado Water Conservation Board.

SPONSORS: Sen. Sonnenberg/Rep. Hansen and McKean

COMMITTEES: Senate Committees – Agriculture, Natural Resources, & Energy

PURPOSE OF THE BILL: To provide a water court process by which the owner of a water storage right in newly constructed reservoir or a physical enlargement of an existing reservoir can comply with fish and wildlife mitigation requirements by contracting with the Colorado Water Conservation Board and adjudicating in Colorado Water Court to dedicate an amount of the stored water to be released to mitigate impacts on fish and wildlife within an identified stream reach.

PROPONENTS OF THE BILL: Northern Colorado Water Conservancy District

POTENTIAL STAKEHOLDERS: Colorado Water Conservation Board, Colorado Parks and Wildlife, other water users on the specified stream

BACKGROUND: Northern Water is building the Northern Integrated Supply Project (NISP) with 14 partners who will receive the benefit of the water. In order to comply with statutory requirements by the Colorado Division of Parks and Wildlife, Northern must mitigate impacts to fish and wildlife under a mitigation plan approved by Colorado Parks and Wildlife and the Colorado Water Conservation Board, which result from construction of the project. Northern plans to meet this mitigation requirement by dedicating a portion of the amount stored in the reservoir. The released amount would “ride on top” of the normal stream flow and be protected from diversion by other users while the normal stream flow would remain subject to diversion under the prior appropriation system. The dedicated release would be protected from the point of release into the natural stream to a downstream termination point. The dedicated release must be determined by the CWCB to be appropriate for stream flows to preserve or improve the natural environment to a reasonable degree and approved by a Water Court decree. The protected release will be administered by the State Engineer in accordance with the decree.

Is this bill necessary this year? In 2017 Northern testified that construction delays cost \$2 million per month; thus, time is of the essence.

How does the bill change current law? This is a change to the existing law as it allows water released from a reservoir to be protected from use for exchange, and augmentation or other diversion for a specified stream reach by any other water user.

Does the bill affect the prior appropriations system? No, the protected release of water is under an existing water storage right and the timing of the release can be determined by the owner. In addition, a full water court process is required to protect against injury to other water users.

How is the bill implemented? Because it is very difficult to expand or build new reservoir storage capacity, this statute may not be used frequently but is an important option for meeting the requirements of state required mitigation. An entity desiring to use it would need to 1) develop a mitigation plan approved by Colorado Parks and Wildlife; 2) apply to and work with the CWCB to determine appropriate amount of water to be released to mitigate the impacts on fish and wildlife as well as the appropriate timing of release and the termination point on the qualifying stream reach; 3) apply to the Water Court for approval of the release and assure non-injury to other water users; 4) comply with the State Engineer's requirements as that office administers the release.

Practical Considerations: n/a

Fiscal Impact: The bill will have limited fiscal impact.