



HB19-1271

SHORT TITLE: Augmentation of Instream Flows

LONG TITLE: Concerning a clarification of the authority of the Colorado Water Conservation Board to augment stream flows with acquired water rights that have been previously decreed for augmentation use.

SPONSORS: Rep. Arndt

COMMITTEES: House on Rural Affairs & Agriculture Committee

PURPOSE OF THE BILL: To allow the use of water under an augmentation decree to be used to augment an instream flow.

PROPONENTS OF THE BILL: Colorado Water Trust; Conservation organizations

POTENTIAL STAKEHOLDERS: Other water users, State Engineer's Office,

BACKGROUND: The CWCB may acquire water for instream flow purposes through its own decreed water right or through a lease from another water right owner. This bill makes it clear that the instream flow may be augmented by water subject to an augmentation decree granted by the Water Court. The bill clarifies that the Colorado water conservation board may augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been previously quantified and changed to include augmentation use, without a further change of the water right being required. The CWCB would maintain control over the instream flow.

Is this bill necessary this year? No

How does the bill change current law? Proponents view this as a clarification. This would provide added water to the stream above the protected instream flow. The augmentation water is not subject to diversion, exchange, or other use. After the augmentation water has been used for its decreed purpose, it may be rediverted for reuse (if allowed under the decree) or left in the stream for downstream water rights to be exercised in priority.

Does the bill affect the prior appropriations system? It should not, but if the augmentation water has an older priority than the instream flow it is augmenting, it may cause the instream flow to jump ahead in priority. After the augmentation water has been used for its decreed purpose, it may be rediverted for reuse (if allowed under the decree) or left in the stream for downstream water rights to be exercised in priority.

How is the bill implemented? The CWCB would apply to the Water Courts for an augmentation plan for the instream flow. The Water Court would evaluate the plan with the usual opportunities for other water users to object based on potential injury.

Practical considerations: How would injury be determined or alleged? Is notice period sufficient to determine potential for injury?

Fiscal Impact: No fiscal note has been issued. It should be assumed that the Water Court will experience some additional workload as well as the CWCB.

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