

# COLORADO TROUT UNLIMITED

## FINAL LEGISLATIVE REPORT

15, May, 2016

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We survived another 120 days. It was a sometimes bumpy ride, and there were twists no one expected. At the end of the day, however, we ended as we predicted. We were successful in stopping or fixing all of the assaults on environmental health. As expected, due to the political landscape, we were unable to make much progress; though we did take a few very modest steps forward relative to funding for environmental priorities in the water plan, and with the legalization of rain barrels! Here's a brief look back at how the session unfolded-

*\* Priority bill*

### \*HB1109 SKI RIGHTS

(Becker K, Sonnenberg)

Position: Neutral

Status: Passed

HB1109 is this year's version of the annual ski rights bill. The USFS finally issued the new directive, and predictably, the industry isn't happy. The new directive requires that lessees who operate ski areas on Federal land must maintain a portfolio of water rights sufficient to ensure continued operation for the term of the lease.

HB1109 declares that the Federal government can't impose conditions on use which require a transfer of ownership, restrict the severability of a water right, or require a third party to supply water to a federal lessee for a set length of time. The bill specifically and explicitly does not impact federal authority to impose bypass flows, however, and that has been the environmental trigger. While there are still issues with the bill, they aren't issues that directly impact environmental values.

This year, new participants suddenly joined the discussions surrounding this issue. As a result, the Attorney General sought amendments that removed or weakened the negotiated language protecting bypass flows. Though it was exciting to be able to have a neutral position this year, for a time it didn't look as if that option would remain. After many hours of meetings and negotiation, we were finally able to find language that satisfied the Attorney General without harming the savings language for bypass

flows. The bill was amended with the new language, and passed in whirlwind fashion. With any luck, we will now have a reprieve from this bill for a while!!

**\*SJM1 GOOD SAMARITAN LEGISLATION**

(Roberts)

Position: Support

Status: Passed

SJM1 asks the Federal Congress to pass legislation to encourage cleanup of abandoned mines. There is longstanding reluctance on the part of nonprofit organizations to work on abandoned mine reclamation as a result of the liability which attaches when cleanup begins. Good Samaritan legislation is a way to alleviate those concerns by providing some form of liability immunity. Clearly there can be both good and bad versions of liability protection. SJM1 is very vague as to what should be included in Good Samaritan legislation. There will be amendments coming to put some protective sidebars on what we would like to see in federal legislation. Even without the amendments, however, encouraging Congress to look at ways to encourage reclamation of abandoned mines is a good thing.

**\*SB21 PUBLIC LANDS DAY**

(Donovan, Mitsch-Bush)

Position: Support

Status: Passed

SB21 declares the fourth Monday in March as Public Lands Day. The bill makes the day a state holiday, and directs the governor to issue an annual proclamation urging celebration of public lands day. The Senate amended the bill to include bad language, including reference to State oversight, and support for resource extraction. We removed the bad language in the House, but the Senate strenuously objected, and the bill went to conference committee. In its final form, the entire legislative declaration about the value of public lands was removed, and the bill merely creates the State holiday.

**\*HB1310 OIL AND GAS LIABILITY**

(Salazar, Carroll)

Position: Support

Status: Dead

HB1310 loosened the current standard of proof for surface owners who are harmed by oil and gas operations. Current law requires proof that the operation caused material injury to the use of the property. The bill required proof of "harm to use of the property".

The bill also created a strict liability standard for operators when operations cause earthquakes which result in property damage.

**\*SB117 LIMIT AGENCY FINES**

(Sonnenberg, Coram)

Position: Oppose

Status: Dead

SB117 prohibited the State from imposing penalties for violation of State Law or Agency rule unless the agency first provided written notice of the violation, and the violator failed to remedy the violation in 20 business days. The bill essentially granted all industries an additional month of penalty free violation of any rule or law.

**\*SB160 POLICE POWER ON FEDERAL LAND**

(Lambert, Lundein)

Position: Oppose

Status: Dead

SB160 was a rerun of a bad public lands bill. It gave every political subdivision in the State police powers to effect control over Federal land whenever “conditions adversely affected public health or safety”. That was an awfully broad grant of new authority, and was a short step from outright seizure of federal property.

**\*HB1030 OHV REGULATION ON COUNTY ROADS**

(Brown, Donovan)

Position: Neutral

Status: Passed

HB1030 was the result of an entire summer of work by the Off Highway Vehicle interim committee. As introduced, it created a voluntary registration program for OHVs which would be used on county roads. There were a number of safety requirements for registration. After months of discussion, however, the bill still posed the same fiscal problems as the attempt from last year. As a result, CCI has jettisoned the entire registration discussion, and now the bill simply allows counties to impose more stringent requirements than are contained in current CPW regulations.

While there are no conservation drawbacks contained within the amended language, it is highly disappointing that others are again piecemealing their own desires at the expense of a collaborative process.

**SB218 SEVERANCE TAX**

(Lambert, Hamner)

Position: Grudgingly Neutral

Status: Passed

SB218 is one of those late bills that need to exist, though no one likes them. The bill stems from a State Supreme Court case which was decided at the end of April. In a nutshell, State law permits the oil and gas industry to deduct the cost of production from the severance taxes they are required to pay. A year or so ago, one petroleum company amended its 2005 tax return to deduct trucking costs as part of production. The State Department of Revenue denied the deduction, and the company sued the State. After a protracted series of court battles, the Supreme Court found in favor of the industry, determining that the statute applied to both direct and indirect costs of production. As a result, the State must now refund severance taxes to all oil and gas companies who amend their returns to claim additional production costs; refunds are retroactive to 2005. Estimates range from \$30M to \$115M as it is unknown how many companies will refile. SB218 is an effort to remedy the immediate problem. It drains the rainy day funds within the State budget first, but does put a hold on \$29M worth of severance taxes housed at DNR, and \$48M from the DOLA half as well.

It is completely unknown yet whether those severance tax funds will be required, or how much will be necessary if they are needed. Should they be needed, the impacts will hit tier two programs like LEAP first, but there will likely be cuts all around, including to the money set aside for water plan implementation.

An equally thorny problem is the future reduction in severance tax revenue as a result of the decision. Closing that loophole needs to be a primary goal moving forward. Rep KC Becker attempted to remedy the problem by introducing HB1468 on Monday. Unfortunately, the bill was unable to pass in the last three days. This issue will be a priority for next year!

**SB151 RIGHT TO HUNT**

(Sonnenberg, Brown)

Position: Neutral

Status: Dead

SB151 added a declaration to statute that the people have a right to hunt and fish, subject to regulation by CPW as to method of take, harvest and management goals, season structure etc. In essence, the bill did nothing, but clutter up the books and create confusion.

**SB157 NO CLEAN POWER REGS UNDER STAY****(Cooke, Dore)**

Position: Oppose

**Status: Dead**

SB157 was the rewrite of the bad clean energy bills from earlier in the session. It prohibited the State from taking any action relative to implementation of the Clean Power Plan until the Supreme Court stay was lifted.

**SB174 CWCP PROJECTS****(Sonnenberg, Vigil)**

Position: Support

**Status: Passed**

This year's projects bill includes a number of good provisions. Specifically, it includes \$1M for stream management plans (we'd like more, but that's a good start); \$500,000 for watershed restoration; \$200,000 for Windy Gap bypass; and \$1M for SWSI continuation. On the down side, it does replenish the litigation fund (\$600,000). Overall, there is significantly more to like than to dislike.

**HB1430 OIL/GAS NOTIFY LOCAL GOVT OF DRILLING PLANS****(Lebsock, Hodge)**

Position: Support

**Status: Dead**

HB1430 required oil and gas operators to share current and future drilling plans with counties in whose jurisdiction the operations are located. Such notification is already required for municipalities. Unfortunately, even this small step proved too much for the industry, and the bill died on a party line vote in the Senate.

**HB1228 AG TRANSFERS****(Arndt, Donovan)**

Position: Support

**Status: Passed**

HB1228 is an attempt to increase Ag water sharing. The bill permits year to year leases of up to 50% of an agricultural water right for other uses. The leases would not require water court, but would be approved by the State Engineer under his substitute supply authority.

The biggest amendment from an environmental perspective was the removal of language that allowed the new right to be used for instream flow purposes. The removal of the language specifically granting ISF authority was unfortunate, but the amendment did not prohibit ISF use – it merely made the bill silent.

Given that the ATM tool is likely to be used only rarely, and instream use is still possible (though admittedly unlikely), we remain modestly supportive of the bill as an additional tool for flexibility in water management.

#### **HB1313 WATER PLAN IN DEVELOPMENT APPROVAL**

**(Arndt)**

Position: Neutral

Status: Dead

HB1313 allowed local governments to include goals from the water plan as part of the approval process for land use permits. There was an amendment which further weakened the bill – making it clear that the bill “does not create any mandate or affect existing water policy”. This amendment reduced the bill to a point that there wasn’t much left to support. The fact that even the eviscerated version of the bill was assigned to State Affairs in order to ensure its demise was an apt description of the session as a whole.

#### **HB1005 RAIN BARRELS**

**(Esgar, Merrifield)**

Position: Support

Status: Passed

HB1005 is essentially the same bill we saw last year. It permits capture of precipitation using up to two rain barrels with a maximum capacity of 55 gallons each. The water captured may be used for outdoor purposes only. Sen. Sonnenberg is again leading the opposition to the bill. He has drafted and amendment to declare all precipitation in the state to be tributary water. The amendment also makes the local water provider responsible for any injury to downstream water users.

#### **SB7 BIOMASS**

Position: Oppose

**(Roberts)**

Status: Dead

SB7 created an incentive for use of biomass by including a multiplier to enhance its value under the renewable energy standard.

Biomass in the form of wood (or pellet) burning isn't a great addition to the RES in the first place; offering extra credit for its use will not further investment in sustainable, renewable energy sources. There were attempts by some to make the bill about biochar. Biochar may be a great technology for the future, but it should have a conversation of its own, not be an afterthought to an otherwise flawed bill.

**HJR1023 NUTRIENTS**

(Coram, Sonnenberg)

Position: Oppose

Status: Dead

HJR1023 was a resolution urging the CDPHE to seek legislative approval before enacting any additional regulations for control of Phosphorous or Nitrogen. There was a great deal of language bemoaning the cost of new infrastructure to meet current standards, and a fair amount of language which claimed that since neither Phosphorous nor Nitrogen are toxic to humans, that controlling them wasn't really necessary.

The resolution failed to note that there are numerous financial assistance programs for struggling communities. It also failed to note that communities currently facing enforcement actions have already received dozens or even hundreds of violation notices.

**SB200 WATER PROJECT COORDINATOR**

(Sonnenberg, Vigil)

Position: Neutral as amended

Status: Passed

SB200 creates a new cabinet position, Water Project Permitting Coordinator. As introduced, the bill required the new coordinator to intervene in all applications requiring permits from either the State or Federal government (raw water diversions or impoundments, hydroelectric facilities consumptive, or non-consumptive projects, and projects requiring discharge permits from CDPHE). This would include all proposed reservoirs, as well as updates or improvements to existing reservoirs, drinking water or wastewater treatment facilities, and even stream enhancement projects. Ostensibly they would be responsible for "streamlining" the permit process (read – reduce public input and environmental regulation/mitigation). The position was half funded by CWCB, and half by the new money just allocated to the CDPHE for permitting and inspections. After some serious negotiation, we were able to amend

the bill significantly. Sen. Sonnenberg agreed to language ensuring that the new position has NO authority over the current permitting processes at the Federal, State, or Local level. He also agreed to require that the position be funded entirely within existing resources – without grabbing the money from CDPHE's new fee allocations. Finally, he agreed to repeal the position in two years, so there will not be future changes to the position that become problematic. These amendments count as a HUGE win for us in eliminating the problematic aspects of the bill.

**HJR1021 PERMIT STREAMLINING****(Brown, Sonnenberg)**

Position: Oppose

Status: Dead

HJR1021 was a resolution to Congress, seeking an expedited permitting process. It detailed a number of projects, and lamented the time required to permit and construct them. The resolution referred to the ongoing LEAN process, but in an inaccurate and incomplete fashion. It concluded by urging Congress to pressure agencies into doing things faster.

**HJR1020 CELEBRATE OIL AND GAS****(DelGrosso, Sonnenberg)**

Position: Oppose

Status: Dead

HJR1020 was exactly as the title suggested. It consisted of three pages of glowing language, thanking the oil and gas industry for its contribution to the state. Ugh.

**HB1382 PISCATORIAL DIVERSIONS****(Becker, KC)**

Position: Support

Status: Dead

HB1382 was intended to clarify and narrow a recent State Supreme Court case. In that case, the court ruled that releases of water for aesthetic reasons did not constitute a beneficial use of water. Aesthetic benefit was one of the reasons for release under the “grand bargain” between the west slope, Denver Water, and the conservation community. The case is also unclear as to how broadly “aesthetic benefit” was interpreted. As a result, the case might have put in jeopardy flushing flows, and other releases for stream health from reservoirs across the State. After significant opposition from several water users, Rep Becker opted to pull the bill and work on the issue over the summer.

**SB44 CONSERVATION EASEMENTS****(Sonnenberg)**

Position: Oppose

**Status: Dead**

SB44 prohibited the Department of Revenue from objecting to the valuation of property protected under a conservation easement unless the appraisal was performed by an appraiser who has been convicted of fraud or misrepresentation. The bill also required the State to retroactively reimburse tax credits that were denied, unless they complied with the provisions of the bill. SB44 was another attempt to allow those who claimed enormously inflated land values to receive credit for those inflated values.

**HB1392 WATER BANKING****(Arndt)**

Position: Support

**Status: Dead**

HB1392 expanded the existing water bank pilot program in the Arkansas basin statewide. Despite valiant efforts to please everyone, there was significant opposition from several water providers and other water users. Rep Arndt pulled the bill from consideration, and announced her intention to have it be a topic of discussion during the interim committee this summer. This issue will be back next year.

**HB1355 LOCAL GOVT AUTHORITY OVER OIL/GAS****(Foote, Ulibarri)**

Position: Support

**Status: Dead**

HB1355 clarified that Local Governments had siting authority over Oil/Gas facilities as part of their land use powers. Unfortunately, the Governor joined the industry in opposing the bill, and at the end of the day, the bill died 33-32 on the House floor.

**HB1283 WATER AUDIT****(Becker KC)**

Position: Support

**Status: Dead**

HB1283 required water providers over a threshold size to audit their water systems for waste every year. They were also required to report the results of the audit to the CWCB. The CWCB, in turn, was to develop a scoring system for determining the adequacy of water loss reductions.

Unfortunately, even the scaled back version was too onerous for several water providers, and the Ag folks. As a result, the bill died in House Ag. It will be back as an interim committee topic through the summer.

**HB1004 CLIMATE ACTION PLAN****(Winter, Kefalas)**

Position: Support

**Status: Dead**

HB1004 required the State to develop measurable goals with respect to the climate action plan. The measurable goals had to demonstrably reduce greenhouse gases, or increase Colorado's ability to adapt and respond to climate change.

**HB1256 SOUTH PLATTE STORAGE****(Brown, Sonnenberg)**

Position: Neutral as amended

**Status: Passed**

As introduced, HB1256 was essentially a rerun of a bill from last year. It directed the State to do a study to find a storage site on the South Platte River. There were no sidebars on what might be an advisable, or even a feasible site.

In committee, the bill was amended to add reference to smart or alternative storage. The study was tied to approval by the South Platte basin round table – and the funding stream was redirected to be from funds available to the basin roundtables. With the amendments, the bill is largely fixed. While it's not something we can wholeheartedly support; it is, at least, harmless.

**HB1019 BROADCAST BURNING****(Becker K., Jones)**

Position: Support

**Status: Passed**

HB1019 adds broadcast burning to the list of activities for which grants are available from the Healthy forests fund. Fire is a useful tool for rejuvenating forests and improving forest health. One of the reasons

for insect infestations, and fuels buildup is fire suppression as a policy for the last half century. Permitting (and even encouraging) targeted burning is probably a good thing.

### **SB3 BROADCAST BURNING**

**(Roberts, Becker K)**

Position: Support

Status: Passed

SB3 adds broadcast burning to the list of actions for which grant money is available from the wildfire risk reduction fund. The bill also adds \$3M to the fund. Half of the money comes from severance taxes, and half from the State general fund. The bill is similar to HB1019, but identifies a different fund.

So that's it for this session. The final tally was 19 wins, and 7 losses (three of which were pulled by the sponsors). More importantly, there were no steps backward, except for SB218 relative to funding right at the end of the session. The interim committee will begin meeting in June, and will start working on legislation toward late July. As an election year, discussions about legislation will be a bit later than in nonelection years. We will need to start gearing up as a committee in late October, and bill ideas will be fleshed out through November after the elections.

Tight Lines!!!

*Jen*