

AUDUBON COLORADO LEGISLATIVE REPORT

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The Legislature convened on January 9. There are twenty days left in the session, though some rumors state that there may be as few as fifteen days left. Either way, the end is almost in sight. To date it has been an exceptionally successful session, though there are several fights still to be decided.

Common Acronyms:

CDPHE – Colorado Department of Public Health and Environment

CWCB – Colorado Water Conservation Board

CWPDA – Colorado Water and Power Development Authority

DNR – Department of Natural Resources

DRMS – Division of Reclamation, Mining and Safety

DOLA – Department of Local Affairs

DOW – Division of Wildlife

GEO – Governor's Energy Office

MLRB – Mined Land Reclamation Board

PILT – Payment in Lieu of Taxes

REA – Rural Electric Association

WQCC – Water Quality Control Commission

PRIORITY BILLS

UPCOMING FIGHTS:

Coal bed Methane Produced Water (McKinley) – averted for this session

Pine Beetle/Watershed Protection (Romer plus West Slope) – SB221 see below

***SB221 BONDING FOR FOREST HEALTH**

(Romer, Scanlon)

Position: Amend

Status: Senate Floor

CALLS NEEDED TO ALL SENATORS

SB221 allows the CWPDA to issue bonds to governmental entities for forest health and watershed protection projects. It also adds timber removed as part of such projects in the biomass definition of “clean energy”. While we are supportive of the intent to protect watersheds from the effects of catastrophic fire, there are a number of concerns with the bill that must be addressed.

The definition of forest health project must include sidebars to assure ecological protection and mitigation of unavoidable consequences. The definition of watershed protection project must be clarified to ensure that increasing water supply is not a management goal. Narrowing these definitions also reduces the problem of including additional timber in the biomass section.

The memoranda of understanding between governmental entities to distribute money for projects must include forestry experts to ensure that the projects will have the intended effect, and to minimize environmental impacts. Also, there need to be additional protections for roadless and wilderness areas.

We are working with the sponsors and other stakeholders to address these concerns. Stay tuned...

***SJR22 AMEND OIL AND GAS RULEMAKING**

(Cadman, McKinley)

Position: Oppose

Status: Senate Floor

SJR22 calls on the COGCC to limit the scope of the ongoing oil and gas rulemaking. It also calls on the COGCC to include economic analysis of potential cost increases as a result of the rulemaking. We adamantly oppose efforts to soften potential regulations for protection of species, habitat, and the ecosystem as a whole.

***HB1069 OFF HIGHWAY VEHICLE ENFORCEMENT**

(Curry, Tochtrop)

Position: Support

Status: Signed

HB1069 allows State peace officers to enforce off highway vehicle regulations on federally owned public land. The bill also requires the DOW to report to the legislature in one year about the number of citations issued. Although there is no additional staff to search for violations, HB1069 is a very positive step.

***HB1137 LIMIT DIVISION OF WILDLIFE ACQUISITIONS**

(Sonnenberg, Brophy)

Position Oppose

Status: Dead

HB1137 require the DOW to release land or water of equal value whenever it acquires new property. Additionally, it requires that all acquisitions be approved by bill in the legislature. HB1137 also requires the DOW to pay PILT to counties in which it owns property.

HB1137 is a direct attack on conservationists. We lose thousands of acres of habitat to development every day. Requiring DOW to divest property puts innumerable species at risk. HB1137 essentially requires the state to sacrifice some species in order to save others. Choosing winners and losers among wildlife species is not only poor public policy; it ultimately results in everyone losing.

Additionally, requiring a bill for all acquisitions throws a wrench into the timing of transactions. The legislature already has oversight, as DOW must get approval from the Capital Development Committee before proceeding with any transaction. Requiring a bill as well could set negotiations back by a full year since the legislature is only in session from January through May.

***HB1141 SUSTAINABLE WATER SUPPLY**

(Curry, Bacon)

Position: Support

Status: Senate LG

HB1141 requires that developers demonstrate, during the approval process, that a sufficient water supply exists to serve the proposed development. HB1141 represents the first time in nearly a decade that we have seen an attempt to link water supply with new development.

After numerous rewrites, HB1141 is now supported by a wide coalition of water providers and local governments, as well as by the conservation community. The realtors and the homebuilders remain opposed. Although we face a tough fight in the Senate, victory is possible on this landmark bill.

We expect to see the bill in committee next week.

***HB1161 IN SITU LEACH MINING OF URANIUM**

(Kefalas, Johnson)

Position: Support

Status: Senate Floor

CALLS NEEDED TO ALL SENATORS

HB1161 does three things. First, the bill defines uranium mining as designated mining operations. Designated mining operations were created after the Summitville disaster. DMOs involve a heightened standard of environmental protection, monitoring, and surety for reclamation. Second, the bill requires in situ mining operations to demonstrate that they can reclaim the aquifer to pre-mining conditions. Finally, the bill requires the operator to notify the DRMS immediately if anything goes wrong, and to begin reclamation immediately upon cessation of mining or sooner if something bad happens.

The mining association and uranium operators remain the only opposition to the bill. The battle remains an uphill fight, but the outlook is promising.

***HB1165 STRENGTHEN MINING RECLAMATION**

(Fischer, Bacon)

Position: Support

Status: Dead

HB1165 increased the oversight of the MLRB over mining operations in a number of ways. The bill required the MLRB to account for risks to human health and to the environment during the permitting process. It required the MLRB to regulate mining operations so as to minimize and mitigate environmental hazards. It required that reclamation costs be borne by the operator, and that availability of funds for reclamation was a condition of permitting. The bill also required reclamation costs to be calculated based on the anticipated time at which the reclamation occurred rather than on current costs. Finally, the bill increased the membership of the MLRB from seven to nine by adding the director of the CDPHE, and a member representing local government interests.

HB165 died in the House Ag committee, but will be reintroduced as a smaller piece of the original legislation.

***HB1279 TAKINGS**

(Bruce)

Position: Oppose

Status: Dead

HB1279 was the most egregious takings bill we had ever seen. It required all local governments and the State office of Smart Growth to create a list of impact fees. The fees were to account for all capital needs resulting from growth. Payment of the fees became the only prerequisite for approval of development applications. The fees were also required to comply with the “rough proportionality” test from the Dolan case. “RP” is a standard that has never been met, and remains undefined, requiring legal challenges to determine a definition.

Additionally, the bill prohibited enforcement, without compensation, of any land use regulation that reduced speculative property value by one percent if the regulation was enacted subsequent to acquisition of the affected property. In other words, the regulations applicable to a specific parcel would change every time the property was sold.

Finally, the bill allowed property owners of parcels 25 acres or larger to petition out of ALL land use regulations- including zoning, based on signatures of twenty-five percent of the landowners within the proposed parcel.

Fortunately, HB1279 was killed in its first committee on a nearly unanimous vote (10-1).

***HB1280 INSTREAM FLOW**

(Fischer, Schwartz)

Position: Support

Status: Signing Ceremony next week

HB1280 is the first of our instream flow package. It removes a hurdle to long term leases of ISF water. Under Colorado water law, the value of a water right is determined by the amount of water used consumptively every year. Years during which the right was leased or loaned for instream use, the consumptive use credit is currently zero. Obviously, receiving zeros for several years can decrease the value significantly. HB1280 removes the years during which water is leased/loaned for instream flow from calculations of consumptive use, thus protecting the long-term value of the right.

***HB1304 BALD EAGLE PROTECTION**

(Solano, Schwartz)

Position: Support

Status: Signed

HB1304 adds bald eagles to the list of species for which Colorado levies heightened fines for illegal take or possession.

***HB1346 CWCB PROJECTS BILL**

(Curry, Isgar)

Position: Support

Status: Senate Ag

HB1346 is the annual projects bill for the CWCB. Most of the bill details the loans and grants made by CWCB to various water users. The advent of a new administration in 2006 resulted in a significant shift of priority for several agencies, including the CWCB. For the first time ever, this year's projects bill includes an exciting section appropriating \$1M for acquisition of Instream Flow. We are actively working to ensure that no undesirable changes affect this section of the bill.

***HB1369 TAX CREDIT FOR INSTREAM FLOW**

(Pommer, Shaffer)

Position: Support

Status: Senate SA

HB1369 allows a tax credit against State income tax for permanent donation of water rights to the CWCB for instream flow purposes. The credit is limited to \$250,000 per person and \$2M statewide. Additionally, the credit is only available in TABOR surplus years.

AIR QUALITY/ENERGY

SB55 STATIONARY SOURCE EMISSION FEES

(Hagedorn, Madden)

Position: Support

Status: House Floor

SB55 increases fees for pollution from stationary sources.

HB1025 CONSOLIDATE GOVERNOR'S ENERGY OFFICE

(Weissmann, Tupa)

Position: FYI

Status: Signed

HB1025 is a nonsubstantive consolidation of the requirements placed on the Governor's Energy Office in the last several years. While it contains no new provisions, it bears watching, as the title is broad enough for all sorts of mischief.

HB1107 ENERGY EFFICIENCY

(Levy, Veiga)

Position: Support

Status: Dead

HB1107 required REAs to reinvest a percentage of their sales revenue in conservation activities and education.

HB1160 NET METERING

(Solano, Shaffer)

Position: Support

Status: Signed

HB1160 requires municipally owned utilities and REAs to allow net metering systems of up to 10KW for residential and 25KW for commercial customers. Excess generation is carried forward each month at a one to one correspondence (retail rate). At the end of the year, the utility may reimburse customers with net generation as they choose (retail rate, avoided cost, or even zeroed out – no reimbursement)

HB1164 ADVANCEMENT OF SOLAR TECHNOLOGIES

(Solano, Schwartz)

Position: Support

Status: Senate Floor

HB1164 directs the PUC to establish rules for the encouragement, and regulation of solar technologies.

LAND USE

SB37 RENAME ENVIRONMENTAL COVENANTS

(Tupa, Fischer)

Position: Support

Status: Signed

SB37 creates a new name for environmental covenants. There have been problems with the US Department of Defense; which has refused to grant an environmental covenant to the State at the Rocky Mountain Arsenal. The Federal agency has argued that environmental covenants may create a State interest in Federal property. As a result, they have contended that they are unable to grant a covenant as Federal law bars them from transferring an interest in property until cleanup is complete. SB37 solves the problem by creating an identical program, a Notice of Environmental Restriction, based on the police powers of the State.

WATER

SB28 BONNY RESERVOIR

(Brophy, Gardner)

Position: Monitor

Status: Dead

SB28 required the Department of Parks and Outdoor recreation to cede control of water in the conservation pool at Bonny Reservoir to the CWCB. The CWCB was directed to release the water as an “instream flow” in order to meet the compact delivery required on the Republican River.

SB36 WATER SUPPLY RESERVE ACCOUNT

(Isgar, Curry)

Position: Support

Status: Dead

SB36 required that local governments have a water conservation plan in place in order to apply for grants from the water supply reserve account. The bill also made the account perpetual by repealing the requirement that moneys revert to the severance tax operational account in four years.

HB1014 WELL PERMIT TRANSFER

(Looper, Gordon)

Position: Support

Status: Signed

HB1014 requires that well permits be included in closing documents for real estate transactions. The bill also requires that buyers register the change of ownership with the State Engineer's Office within a certain timeframe.

HB1026 CHANGE NAME OF CWRRI

(Fischer, Schwartz)

Position: Support

Status: Signed

HB1026 changes the name of the Colorado Water Resources Research Institute to the Colorado Water Institute. The bill also restores some funding to the Institute.

HB1099 MOVE DRINKING WATER PENALTY APPEALS TO WQCC

(McNulty, Tochtrop)

Position: Support

Status: Passed

HB1099 simply moves the hearing of appeals to drinking water penalties and discharge permit violations to the Water Quality Control Commission rather than the State Board of Health. The bill is necessary as a result of more substantial changes in authority in previous years. These two programs were overlooked in drafting of previous legislation.

HB1222 EXPAND HYDRO DEFINITION

(McNulty, Harvey)

Position: Oppose as introduced

Status: Senate Approps

As introduced, HB1222 had several problems. Although intended to replace existing size caps in the definition of hydropower under the renewable energy portfolio standard with a low impact standard, the language of the bill lacked sufficient protection for fish health and minimum flows. The bill also included pumped storage as a qualifying source of energy, despite the fact that pumped storage results in a net loss of energy. Finally, the bill left the existing size caps in place, and simply added incentives for additional hydro.

As amended, the bill was reduced to an interim committee study on the potential for changing or expanding the definition of hydro, and whether hydro should really be included at all.

WILDLIFE

SB13 REALLOCATE SEVERANCE TAX

(Schwartz, Fischer)

Position: Support

Status: Senate Floor

SB13 reduces the amount of severance tax distributed to the COGCC and the DRMS by five percent each. The cumulative ten percent of severance tax is redistributed to the DOW and the Division of Parks and Outdoor Recreation. DOW is required to spend the money on energy related impacts to wildlife. Parks is not constrained in its expenditures.

SB71 EXTEND PINE BEETLE PILOT PROGRAM

(Gibbs, Scanlan)

Position: FYI

Status: Passed

SB71 extends the repeal date of the pine beetle pilot program until 2012. There are no changes to the program itself.

SB168 SPECIES CONSERVATION TRUST FUND

(Isgar, Curry)

Position: Support

Status: House Approps

SB168 is the annual appropriation to the species conservation trust fund. This year there is a larger than usual amount of money available due to reversion of the funds originally slated for the Deep Underground Science Experimental Lab (DUSEL) project at the Henderson mine. Most of this additional funding is being used to pay down Colorado's obligation to the tri-state recovery program for the cranes in Nebraska. A smaller portion (\$500,000) is slated for acquisition of instream flow rights to protect endangered fish.

HB1200 BAN INTERNET HUNTING

(Soper, Tochtrop)

Position: Support

Status: Passed

HB1200 bans the practice of remote internet hunting in Colorado. While Audubon generally doesn't take positions on hunting issues, the practice of internet hunting poses a number of problems for wildlife management. With only a two dimensional screen, the hunter has no way of ensuring that other game, or non-game species aren't affected by his activities. Internet hunting also poses a risk to human safety, as the hunter cannot realistically account for topography, wind, or other variables present in the field.

HJR1026 SHORTGRASS PRAIRIE PRESERVATION

(McFadyen, Schwartz)

Position Support if amended

Status: House Ag

HJR1026 is a resolution calling on the State to adopt policies to preserve and protect shortgrass prairie habitat and species. While we are very supportive of the mission to protect prairie species, there are several clauses in the resolution that are suspect. If those clauses are amended, we will enthusiastically support the resolution.