

Attached is the latest legislative report from the lobbyist AVAS helps fund (for new members, Audubon chapters around Colorado chip in every year to fund a half time lobbyist during the legislative session to represent our interests)

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## **AUDUBON COLORADO**

### **LEGISLATIVE REPORT**

**April 22, 2011**

**Jen Boulton**

The sixty-eighth general assembly will adjourn on May 11. There are 19 days left. Many of our top priorities are over, though a few remain. There are also 16 more days for problem bills to be introduced. The perennial fight over the budget has just ended, and the legislature must now turn its attention to reapportionment. With any luck, that prospect will consume the remaining time in the session...

### **PRIORITY BILLS**

#### **\*HB1223 COGCC ROLLBACK**

(Scott, King S.)

Position: Oppose

Status: House Floor

HB1223 returns the Colorado Oil and Gas Conservation Commission (COGCC) to its pre-2007 makeup. At that time, the commission was dominated by members of the industry. It was made up of seven members; five representing industry, and two at-large members. In 2007, we worked with a number of others to make the commission more balanced. In its current form, the commission is comprised of nine members; three from industry, one each from local governments, agriculture, conservation, and royalty owners, plus the directors of DNR and CDPHE.

HB1223 was amended in House Ag to be even worse. The amended bill removes the voting status of the department directors. The change means that if HB1223 passes, the COGCC will be comprised of 9 voting members; 5 industry, 1 local government, 1 agriculture, 1 royalty owner, and 1 conservation.

The floor fight looks grim, as the majority party seems to be circling the wagons. We will continue to fight, but it looks like we may have to move the fight to the Senate.

#### **\*HB1294 BEARS**

(Brown, White)

Position: Oppose

Status: House Floor

As introduced, HB1294 eliminates the dates included in the spring bear hunt ban. Instead, the bill returns the authority to the wildlife commission to determine the dates for bear hunting. Amendment 10 passed in 1992 with better than a 2-1 margin (around 70-71% if memory serves). Repealing a highly popular initiative, via the legislature is a slap in the face to the voters. While it is unlikely that the current wildlife commission would rush to reinstate spring bear hunting, their refusal to address the hunting of sows with cubs was one of the reasons for the initiative in the first place.

The bill passed out of the Ag committee, essentially on a party line vote. There are a number of amendments being proposed on the floor. Rep Brown will introduce an amendment to add a date of May 1 as the earliest date for bear hunting. This amendment will likely pass, and clearly does not change our position. Should Rep Brown's amendment fail, however, Rep Wilson has another amendment that requires discussion. Rep Wilson's amendment leaves the dates unchanged for general hunting, but allows the wildlife commission to issue licenses beginning August 1, upon making a finding that the earlier start is necessary for preservation of human health, safety, or welfare.

**\*SB208 MERGE PARKS BOARD WITH WILDLIFE COMMISSION** (Schwartz, Sonnenberg)

Position: Monitor

Status: House Ag

SB208 is the first of a two bill series to merge the Division of Wildlife with the Division of Parks and Outdoor Recreation. This bill merges the Wildlife Commission and the Parks Board into one, fourteen member board of directors. It directs the new board to create a stakeholder process and to merge the agencies.

We have a number of concerns with the concept of a merger, and with the process of creating one. Most of our concerns, however, are prospective in nature. Also, in fairness to the Department, they have tried to address most of our specific issues in drafting the bill. We will continue to make our concerns known, and we will work as hard as we can to ensure that appropriate safeguards exist throughout the stakeholder process this summer and in the bill next session.

**\*HB1034 PROTECT OUR RIVERS LICENSE PLATE**  
(Schwartz)

(Wilson,

Position: Support

Status: Dead

HB1034 created the Protect Our Rivers plate. Anyone in Colorado could purchase the plate with a \$25 contribution to Colorado Trout Unlimited, and payment of the \$50 in standard fees for special plates.

The primary reason for opposition was that the money would go to a 501-c(3) organization. The fact that 60% of the existing group plates dedicate money to c(3) non profits, and that at least a couple of them have a legislative presence seemed irrelevant to the opposition.

Unfortunately, the bill died on a 5-6 vote in the house ag committee.

**\*HB1083 HYDRO**

(Swerdfefer, Giron)

Position: Support as amended

Status: Passed

HB1083 includes pumped storage hydro in section 123 of the renewable energy standard. Section 123 is the section directing the Public Utilities Commission to give full consideration to various technologies, but without providing an incentive for use of the technologies. Section 123 was originally intended for emerging technologies. While pumped hydro is hardly an emerging technology, section 123 is a far less problematic placement than the actual renewable standard. We worked with the sponsor to limit the types of hydro to be considered, and to require the PUC to fully consider the impacts of pumped hydro on fishery health. With the amendments, HB1183 is a positive step toward responsible development of hydropower.

Now that this bill has passed, we can exult in our success. We were able to get a fairly strong incidental hydro standard into the section of statute containing the Renewable Energy Standard, though not in the RES itself. While not a true “low impact” standard for new facilities, the language in HB1083 limits hydro to retrofits, that don’t change historic use patterns, and hydro included on new impoundments constructed for other purposes. HB1083 is a huge step toward the impact based standards we’ve been trying to advance for nearly ten years.

**\*HB1150 GAME CASH RAID**

(Becker)

Position: Oppose

Status: Dead

HB1150 directed the state treasurer to transfer \$5m from the Division of Wildlife to the construction fund of the Colorado Water Conservation Board. The diversion was for 10 years for a total of \$50m.

The primary purpose of the construction fund is to issue low interest loans to water providers for building water supply reservoirs. Water supply projects should be paid for by those who derive benefit from them. While the sponsor included language that the CWCB could only spend the

money on projects which “benefitted wildlife”, any new reservoir could have been argued to benefit wildlife – (migratory birds and waterfowl or stocked fish). Additionally, removal of the funds from control of the DOW created a diversion under federal law. Such diversion would have disqualified the state from federal funding until all diverted funds were fully repaid, with interest. This meant that in addition to the direct loss of \$50M in license revenue, DOW would have lost about \$20M a year in federal money for the 10 years, plus however long it took to fully repay the \$50M, leading to a loss of at least \$250M for the division.

Fortunately, after a tremendous outcry by the conservation and sportsmen communities, and some intense negotiations between DOW and the sponsor, Rep Becker agreed to table HB1150.

## **GOCO**

Rep Massey had indicated intent to introduce a new proposed constitutional change. The bill would submit a question to voters in 2012, asking for a three year timeout for lottery. During the timeout period ALL lottery proceeds (GoCo, State Parks, and Conservation Trust fund) would be transferred to K-12 education.

We may have gained a little breathing room, as this bill doesn’t look likely right now. This fight isn’t going away, however, and we will see attacks on lottery funding next session.

Lottery proceeds total about \$115M per year. Transferring that level of funding will decimate funding for habitat and open space programs, but is hardly a drop in the bucket compared to the \$3.2B annual budget for K-12 education. Additionally, passing such a proposal could backfire in terms of future education funding as voters may feel that the problems have been addressed.

## **OTHER BILLS**

### **HB1208 CONSERVATION EASEMENT IMMUNITY/ TAKINGS**

(McKinley)

Position: Neutral as amended

Status: House Finance

HB1208 does two things. First, it grants immunity from the State for repayment of fraudulent conservation easements. Second, and more problematic, HB1208 declares that any activity by, or allowed by a governmental entity which might interfere with the conservation value of an easement will be compensable as a takings. We all know that regulation IS NOT the same as confiscation. Therefore, regulation, or lack thereof, is not compensable. The confusing aspect here is that

regulatory takings is about preventing regulation. HB1208 seems to be attempting to create a cause of action for failure to stop an action. In any event, this section of the bill must be removed.

In committee, Rep McKinley agreed to amendments eliminating the problematic sections of the bill. In its current form, the bill grants immunity to landowners for denied easement. HB1208 is in a holding pattern pending other discussions.

**HB1300 CONSERVATION EASEMENTS**  
Grantham)

(Looper,

Position: Recommend monitor to support

Status: House Finance

HB1300 creates a process for dealing with conservation easement issues for landowners and credit buyers whose tax credits have been denied. In most cases, these individuals have been denied for blatantly fraudulent appraisals. A few however, have been caught in the process for minor discrepancies. HB1300 essentially allows affected parties to waive administrative remedies, and proceed directly to district court.

**HB1243 KENO**

(Pace, Tochtrop)

Position: Watch

Status: Dead

HB1243 created Keno as a new lottery game. Unlike last year, this bill was written to direct only the portion of the spillover attributable to the new game to tourism, and economic development.

**SB233 VIDEO LOTTERY TERMINALS**

(Hodge)

Position: ??

Status: Senate BLT

SB233 allows installation of VLTs at horse racetracks in Colorado. It grants the vendor a 70% vendor fee, and distributes the remaining 30% according to the current 50-40-10 split in the constitution. Any spillover attributable to the addition of VLTs will be dedicated to a higher education scholarship program.

**HB1068 TEMPORARY TRANSFERS**

(Fischer, Giron)

Position: Watch

Status: Dead

HB1068 proposed to allow longer term transfers (up to 80 years) of Agricultural water to other uses. It was written to be specific to the Arkansas basin.

As the super ditch moves forward, proponents are encountering cost issues with water court change of use proceedings. HB1068 sought to allow irrigators to lease portions of their water to the ditch using the administrative authority of the state engineer's office. There was a fair amount of controversy among water attorneys representing senior rights owners as to the potential for injury in the bill.

We have historically supported increasing flexibility in the use of water between Ag and municipalities as a way of avoiding construction of large new impoundments.

**HB1146 AG TAX CLASSIFICATION**

(Massey, Steadman)

Position: Monitor

Status: Senate Floor

HB1146 is an attempt to limit perceived abuses of agricultural tax classification. It requires that the two acres immediately surrounding a dwelling unit be classified as residential rather than agricultural. There is an exemption if the dwelling is an integral part of an agricultural operation.

**HB1082 WELD COUNTY OZONE**

(Vaad, Renfroe)

Position: Oppose

Status: Dead

HB1082 is the third annual attempt to remove Weld County from the nonattainment area for ozone.

**HB1177 HEALTHY RIVERS CHECK-OFF**

(Sonnenberg & Jones, Schwartz & White)

Position: Support

Status: Passed

HB1177 extends the healthy rivers tax check-off until 2016.

**HB1255 ALTERNATIVE ENERGY PARKS**

(DelGrosso, Schwartz)

Position: Oppose

Status: Dead

HB1255 allowed the use of Tax Increment Financing (TIF) in order to locate alternative energy production facilities near each other. Increased use of TIF as a development incentive has broad impacts on the State budget. TIF was created as a tool to encourage urban redevelopment. More recently, it has been used in much broader contexts to entice new development. Developers know that, and have occasionally engendered bidding wars for the best deal from local governments. Existing residents then suffer when cities can't provide basic services. Counties and special districts are impacted when they have to provide services to residents who can't be served by cities – which have pledged future revenue to encourage development. Finally, the State is impacted by the requirement to backfill local school districts.

**HB1026 STORMWATER ADMINISTRATORS**

(Gerou, Jahn)

Position: Watch

Status: Passed

HB1026 is an attempt to streamline the inspection process for storm water discharge. The health department is extremely understaffed, and inspections are not getting completed. According to proponents, in a few cases, when violations occur, notification of violations and enforcement actions haven't occurred until the project was completed. HB1026 proposes to create a list of administrators, who have training in storm water inspection. Permittees will be able to contract with these administrators for more timely inspections. The down side is that the results of the inspections will be treated as voluntary disclosures under the self audit law. Colorado's self audit law grants immunity from enforcement for any violation disclosed, and also makes the result of the audit proprietary. It's a bit like calling the police and saying "I just hit a pedestrian, while driving drunk, but I called an ambulance, so now you can't charge me."

After much discussion, the problematic references to the self audit law have been removed.

**HB1066 EMINENT DOMAIN DUE PROCESS**

(McKinley)

Position: Watch

Status: Dead

HB1066 required notification and opportunities for comment prior to the condemnation of livestock, seepage water, or airspace less than 500 ft. It didn't seem to present much issue for us as introduced. However, the title was horrific. It was extremely broad, and could have permitted all sorts of takings mischief. HB1066 died on a 9-2 vote in the judiciary committee.