



Colorado Water Congress Opposes SB17-117

Recognize Industrial Hemp Agricultural Product for Agricultural Water Right

Why does CWC oppose this legislation?

Federal law preempts state statute. If enacted, this bill will directly conflict with Federal law. Marijuana and its cannabinoids, including hemp are listed as a Schedule I controlled substance under the federal Control Substances Act (CSA). To the extent that this bill proposes to make the Bureau of Reclamation (Reclamation) operate its facilities, make available contract water, execute and administer its water-related contracts, and otherwise perform its contractual and legal duties in a manner that is inconsistent with the CSA, federal law will control the actions of Reclamation and those entities with which Reclamation contracts.

The Colorado State Engineer's Office issued written Instruction on the use of water for crops grown legally in Colorado. Colorado law allows for the growing of hemp and thus allows irrigation using water administered under Colorado law.

The State Engineer's Instruction does not and cannot address the release of federally developed or comingled water from federal facilities or through a federal conveyance for irrigating a prohibited federally controlled substance.

Federal facilities or properties cannot be used to commit a federal crime. Reclamation Directive and Standard (D&S) states that if federal project water is used for irrigating a Schedule 1 Controlled Substance, notice of such action shall be turned over to the Department of Justice for prosecution.

This statute places water providers at risk of federal prosecution. Many Reclamation projects are managed by local governmental agencies, primarily water conservation and conservancy districts. To the extent that water providers must follow this bill, if enacted, they risk significant fines and potentially jail time up to 20 years under the CSA.

A federal solution is required, with state support. Neither Colorado statute nor the State Engineer's Office can override the Reclamation D&S. A change in the Controlled Substances Act is needed. This can best be accomplished in collaboration with our Colorado Congressional Delegation. The issue is an appropriate topic for the Interim Water Resources Review Committee in order to involve all stakeholders and create a multi-pronged approach to address the CSA.



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Background:

In 1970, the Controlled Substances Act classified the Cannabis sativa plant as an illegal "schedule I drug," which imposed strict regulations on the cultivation of industrial hemp as well as marijuana. Under the Controlled Substances Act farmers can only grow hemp after registering with the Drug Enforcement Administration (DEA).

The Bureau of Reclamation will not approve the use of federal facilities to convey water for controlled substances, even if the substance, hempseed, is legal in Colorado.