

House Bill 1291 – Alternate Places of Storage for Fully Consumable Water Supply

Increasing Flexibility, Maximizing Use

- Under Colorado law, water is decreed for storage in a specific location or locations. In order to change the location(s) of storage, a water rights owner must obtain a change decree from the water court.
- For rights decreed for irrigation, water court examination of proposed alternate places of storage is essential to ensure that historical consumptive use (the portion of the water right that may be applied to changed uses) is accurately quantified and historical return flows are replaced in time, place and amount.
- However, if a change in use for a direct flow or storage irrigation right has already been decreed by the water court, and the consumptive use portion and return flow portions of that right have been determined previously, it is not necessary to revisit these issues if the owner of the right wishes to store the consumptive use portion of the right in other locations.
- In these circumstances, the issues are limited to how the consumptive use portion of the changed right is moved from one reservoir to another, and accounted for properly. **The State Engineer already has authority, policies and protocols in place that are routinely used to move fully consumable water** (such as treated effluent) upstream by administrative exchange or downstream and to deliver these supplies to reservoir storage.
- It would be helpful to reservoir owners and to the State Engineer to **affirm in statute that it is permissible to move fully consumable supplies quantified via a change in use proceeding between reservoirs by administrative exchange or stream delivery** and to store these supplies in additional locations, in the same manner this is accomplished with other fully consumable supplies.
- Injury to other water users would be prevented by **strict adherence to the existing change in use decree. There would be no change in the decreed or actual point of diversion.** The water right would be diverted at its decreed point of diversion prior to any re-delivery to other locations, and remain subject to all volumetric limitations. Any return flow obligations would be met as decreed. Re-delivery to other storage locations could occur only after fulfillment of all decreed requirements.
- Allowing water rights owners to store fully consumptive supplies decreed in a previous change in use case in multiple locations without the necessity of an expensive and lengthy water court proceeding would increase system flexibility and facilitate maximization of Colorado water supplies. Injury to other water users would be prevented by adherence to the existing change in use decree and through the exercise of the State Engineer's existing administrative authority to implement exchanges and downstream delivery.