

Why was Senate Bill 23 Vetoed?

Can efficient irrigation systems
improve river health?

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- Senate Bill 2014-23
 - West Slope rancher upgrades irrigation system to take less water from the river.
 - *Non-consumptive diversion* savings are left in the stream and donated to the CWCB.
 - Downstream irrigator protection – amount, timing, and location including return flows.
 - Upstream juniors cannot use the diversion savings now left in the stream.

- Why did Governor Hickenlooper Veto SB 23?
 - “This has to be done in a way to protect downstream users.”
 - Senate Bill 23 protected downstream users; it prevented upstream juniors from receiving a windfall.
 - “honor the thousands of hours that went into crafting this legislation.”

- Opposition to Senate Bill 23
 - Southeastern Colorado Water Conservancy District
 - Northern Colorado Water Conservancy District
 - Colorado River District
 - Colorado Farm Bureau

- Supporters of Senate Bill 23
 - Colorado Water Congress
 - Colorado Cattlemen’s Association
 - Southwestern Water Conservation District
 - Upper Gunnison Water Conservancy District
 - The Nature Conservancy
 - Trout Unlimited
 - Western Resource Advocates

- Colorado's instream flow program is weak.
 - ISFs have junior priority dates of 1973 and later.
 - Little money is available – Colorado dedicates \$2 million each year to purchase instream flows
 - Our economy is \$294 billion.
 - Total instream flows with priority dates before 1900 amount to only .2% of water diverted for agriculture in 2005 in Colorado.

- Dedicated environmental flows are 1.2% of water used in agriculture in 2005
 - 10,825 af for the 15 mile reach
 - 5,000 af for the Yampa River
 - Platte River Recovery Program

- Instream flow statute now only applies to *consumptive* water use.
 - Flows can protect the environment to a reasonable degree.
 - *Non-consumptive* flows cannot be protected – this is the “push water” needed to push water down the irrigation ditch, or return flows, or “tail race water” that returns to the stream at the end of the irrigation ditch.

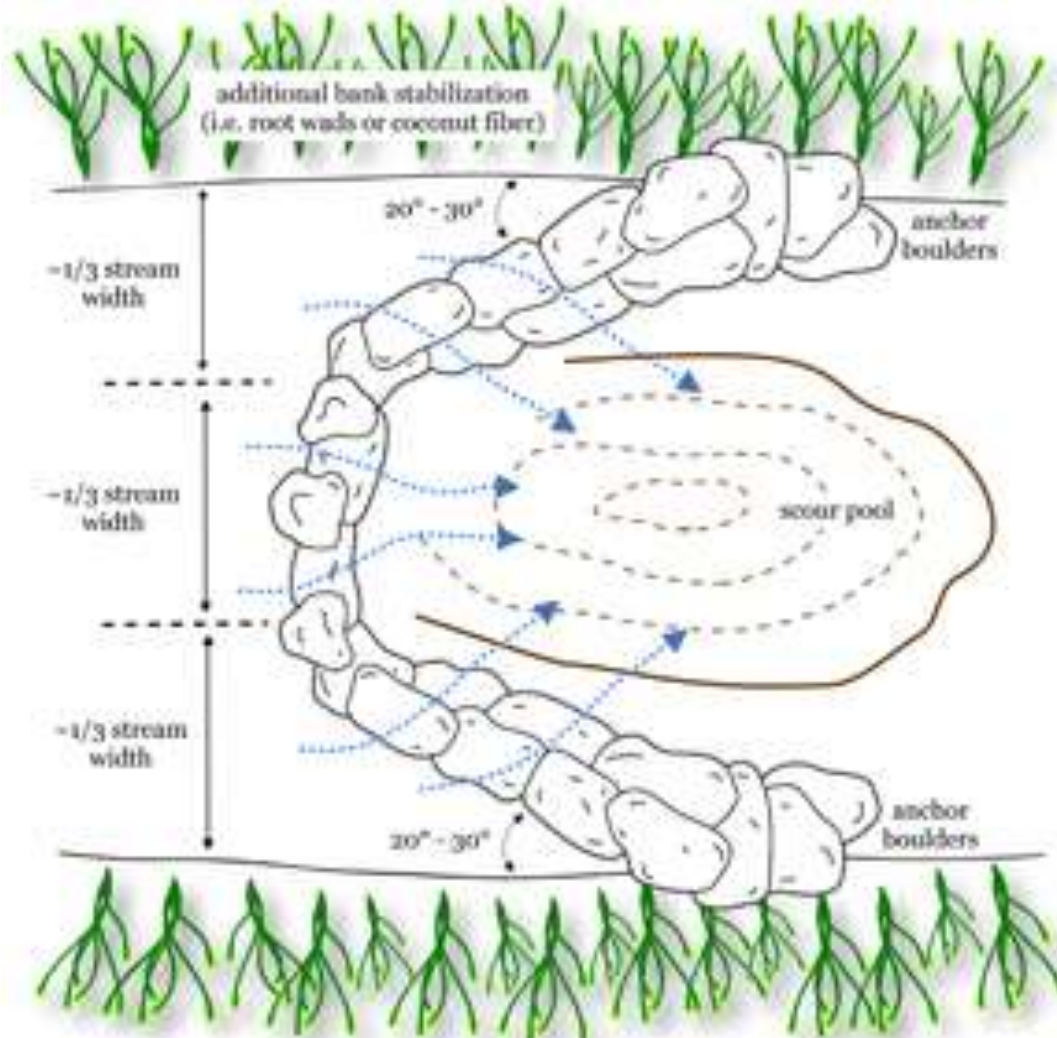
- Agricultural efficiency improvements – sprinklers, Rubicon diversion devices
 - No one can object to irrigation efficiencies – water court lacks jurisdiction.
 - If water right holder wants to sell, return flows lost due to irrigation efficiency improvements may have to be restored at that time.

- If upstream juniors can use water left in the stream from irrigation efficiency improvements
 - The river is worse off because water that used to flow to the downstream point of diversion is now diverted from the river further upstream.
 - Permits an East Slope water provider to divert water to the Front Range.

Engineering solutions

- Rosgen structures
- Rubicon ditch devices
- Pivot sprinklers
- Lined ditches

Rosgen Structure



Rubicon Flume Gate



Center Pivot Sprinklers



Lining ditches



Legal solution – Senate Bill 2014-23

1. CWCB can receive a *non-consumptive* ISF
2. Limited to West Slope only
3. Require water court approval
4. Biological analysis of river protection needed
5. Remove the abandonment penalty – water that is not diverted is not abandoned
6. Protect downstream water rights from injury

Problem – This upset historic water sharing agreements

- Downstream senior permitted upstream junior irrigator to use water out of priority.
- Solution - Statute was amended to require the CWCB to respect historic water sharing agreements.

Problem – This would cause all other irrigators to go to water court and object

- This is expensive – agreed
- The solution is to reform Colorado water law
- Colorado alone of all Western states requires water court approval for every change in crop type irrigated, or the timing, amount, or location of water use.

Fact – Colorado is changing

- 90% of 500 Colorado voters polled in Sep. 2014 say that keeping Colorado's rivers healthy and flowing is extremely or very important; Public Opinion Strategies.
- Colorado Basin Roundtable – Citizens say that stream health is the highest priority
- Colorado's population in 2050 is projected to be 9-10 million. Stream health will be a greater and greater concern

Problem - Big rivers all but dry up in Colorado.

	Minimum flow	Cause
Fraser in 2002	4 cfs	Denver Water
Crystal in 2012	1 cfs	Agriculture
Roaring Fork in 2012	4 cfs	Colorado Springs
Dolores	Dries up	Agriculture

Problem – Native fish are imperiled

- Colorado greenback cutthroat – Colorado's state fish
- 1% of its historic range on the South Platte and Arkansas Rivers
- Rio Grande cutthroat trout – survives in only 15% of its historic range
- Colorado River cutthroat trout - genetically pure populations survive in 1% of its historic range

- How much water is needed to keep a stream healthy?
 - Brad Richter, The Nature Conservancy – 80% is needed
 - Murray-Darling River System, Australia – 33% of native flows are needed
 - Colorado – only 1.4% is dedicated to rivers

- Problem – Few gages are available to gauge stream health
 - CWCB is not interested in obtaining instream flows on rivers that dry up
 - The South Platte dries up 15 times between Greeley and Nebraska
 - Also, CWCB will not accept instream flows if they cannot be measured

Potential Solution – Water bank to meet Colorado River Compact Call

- Enlist high-elevation ranchers in basins where streams are at risk
- Restore native cutthroat trout habitat
- River gages are needed for this to work

Problem – Colorado water law

- Water right is measured by diversions from the stream, yet the diversion is not the water right, the consumptive use is. So, engineers are needed to estimate water rights.
- No one really knows what their water right is until they get to court.
- High legal and engineering fees give deep pockets (Front Range cities) an advantage

Problem – Colorado water law

- High fees prevent innovative irrigation practices, at least on the West Slope.
- The only time you can afford to go to water court is when you want to sell your water.

Proposed solution – Another pilot program

- The 6th Extinction will be 10 years farther down the road.
- What is needed is a pilot program that allows ranchers to change their water rights without having to go to water court. Water court costs helped kill Senate Bill 23.

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