

SB23-XXX - *Restoring the Environmental Health of Natural Stream Systems*

Bill Sponsors: Senators Roberts & Simpson; Representatives McCormick

Summary:

Stream restoration projects are important tools in protecting water supplies, restoring habitat, and recovering from drought, fire, or floods. Under existing water law, certain stream restoration activities may be subject to administration by the Division of Water Resources creating an uncertain or even impossible path for stream restoration projects to proceed. The Colorado Department of Natural Resources is seeking legislation that allows stream restoration activities to occur without undue burdens while protecting water users.



Background

Healthy stream systems improve wildfire resilience, drought mitigation, flood safety, water quality, watershed health, and riparian and aquatic habitat. These shared benefits support local economies and working lands, protect public safety, and contribute to environmental health and welfare. Over time, historic land use practices coupled with drought, fire, and climate change have degraded the natural function of Colorado's streams depriving water users and local communities of these critical environmental services. For decades, stream restoration has served as a valuable tool in re-establishing a stream's natural processes, protecting water infrastructure and improving stormwater and instream water quality. Stream restoration projects have helped to recover from mining disasters, catastrophic wildfires, and the 2013 Floods. They also help to reduce treatment costs for wastewater dischargers and stormwater managers while improving local economies that depend upon healthy rivers for recreation and tourism.



Problem

Stream restoration mechanisms that create a diversion, store water, or create an unnecessary dam or obstruction may be subject to regulation or “administration” under Colorado water laws even if they restore channel and riparian conditions that existed before the natural stream system was damaged (see C.R.S. 37-92-501 and 502). Stream restoration activities that stabilize stream banks, reshape channels, daylight buried streams, reconnect floodplains, or restore riparian areas face an uncertain legal path and could be subject to administration and enforcement without a legal water right or plan to replace the water. **The challenge before the Department of Natural Resources, the Colorado General Assembly, and the water community is to consider the balance between stream restoration’s large-scale benefits relative to potential small-scale impacts to water rights and the disproportionate cost and effort of acquiring, or potential inability to acquire a decreed water right or plan for augmentation.**

Summary of Proposed Legislation:

Adds a new subsection (9) in section 37-92-602, C.R.S. that describes the benefits of and requirements for Stream Restoration Projects. There are a number of requirements to meet the definition of a Stream Restoration Project including that the project:

- *has an environmental purpose or has a multiple benefit purpose that includes an environmental purpose,*
- *exists within certain limits as prescribed by the bill,*
- *is registered with the State Engineer and notice was provided to the Substitute Water Supply Plan (SWSP) notification list prior to construction,*
- *Restoration projects not subject to the registration requirement include project types intended for the sole purpose of recovering from wildland fire or an emergency flood, or projects with no impacts to water rights, such as planting vegetation, fencing and stabilizing or armoring banks or stream restoration projects previously constructed prior to effective date of the legislation.*

