

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

March 2, 2015  
Date

Committee on Agriculture, Livestock, & Natural Resources.

After consideration on the merits, the Committee recommends the following:

HB15-1016 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

- 1 Amend printed bill, page 2, line 3, strike "(c) (I), and (6) (c) (II) (A);"  
2 and substitute "(c), and (6) (e);".
- 3 Page 2, line 4, strike "and (6) (c) (II) (C)".
- 4 Page 2, line 8, strike "development, or" and substitute "development or".
- 5 Page 2, lines 9 and 10, strike "uses, OR A NEW OR REDEVELOPED  
6 MULTI-BUILDING NONRESIDENTIAL PROPERTY" and substitute "uses".
- 7 Page 3, line 5, after the first "OF" insert "PRECIPITATION CONSUMED  
8 THROUGH".
- 9 Page 3, line 6, strike "SUCH A FACTOR," and substitute "THE FACTORS,".
- 10 Page 3, line 7, strike "FACTOR" and substitute "FACTORS".
- 11 Page 3, lines 8 and 9, strike "A FACTOR" and substitute "FACTORS".
- 12 Page 3, lines 20 and 21, strike "Until the pilot project sponsor applies to  
13 the water court for a permanent augmentation plan, the" and substitute  
14 "~~Until the pilot project sponsor applies to the water court for a permanent  
15 augmentation plan, The~~".
- 16 Page 3, line 23, strike "and measured" and substitute "~~and measured~~ OUT

- 1 OF PRIORITY".
- 2 Page 3, lines 24 through 26, strike "FOR A PILOT PROJECT FOR WHICH THE  
3 APPLICATION WAS SUBMITTED ON OR AFTER JANUARY 1, 2016,".
- 4 Page 3, line 27, after "REPLACE" insert "OUT-OF-PRIORITY".
- 5 Page 4, line 3, strike "AND".
- 6 Page 4, strike lines 4 through 7 and substitute "EVAPOTRANSPIRATION FOR  
7 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
8 PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE  
9 HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE  
10 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO  
11 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).".
- 12 Page 4, lines 21 through 23, strike "FOR A PILOT PROJECT FOR WHICH THE  
13 APPLICATION WAS SUBMITTED ON OR AFTER JANUARY 1, 2016,".
- 14 Page 4, line 24, after "REPLACE" insert "OUT-OF-PRIORITY".
- 15 Page 4, line 27, strike "AND EVAPORATION ON THE".
- 16 Page 5, strike lines 1 through 10 and substitute "EVAPOTRANSPIRATION  
17 FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
18 PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE  
19 HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE  
20 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO  
21 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).
- 22 (B) After a minimum of two years of data collection and upon  
23 application to the appropriate water court for a permanent augmentation  
24 plan, the pilot project sponsor shall file an application for approval of a  
25 substitute water supply plan pursuant to section 37-92-308 (4). For any  
26 substitute supply plan application filed under section 37-92-308 (4), a  
27 pilot project sponsor may seek approval from the state engineer based on  
28 replacing only the net depletion caused by the capture of precipitation.  
29 The net depletion shall be calculated as the amount of precipitation  
30 captured minus the historical consumptive use from preexisting, natural  
31 vegetation cover on the impermeable area as demonstrated by analysis of  
32 the data collected by the sponsor during the pilot project THE SPONSOR  
33 SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY

1 THAT WOULD OTHERWISE HAVE ACCRUED TO A NATURAL STREAM; EXCEPT  
2 THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE  
3 SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM  
4 DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF  
5 HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,  
6 CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER  
7 EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND  
8 ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE  
9 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO  
10 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

11 (e) This paragraph (e), paragraphs (a), (b), and (d), and  
12 subparagraph (f) of paragraph (c) of this subsection (6) are IS repealed,  
13 effective July 1, 2020.

14 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (12)  
15 (d) as follows:

16 **37-92-305. Standards with respect to rulings of the referee and**  
17 **decisions of the water judge.** (12) (d) IN DETERMINING THE QUANTITY  
18 OF WATER REQUIRED IN AN AUGMENTATION PLAN TO REPLACE THE  
19 PRECIPITATION CAPTURED OUT OF PRIORITY FROM ROOFTOPS AND  
20 IMPERMEABLE SURFACES THAT WOULD HAVE ACCRUED TO A NATURAL  
21 STREAM UNDER PREEXISTING, NATURAL VEGETATION CONDITIONS FOR A  
22 PRECIPITATION HARVESTING PILOT PROJECT APPROVED PURSUANT TO  
23 SECTION 37-60-115 (6), IF THE APPLICANT USES REGIONALLY APPLICABLE  
24 FACTORS ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI) FOR  
25 THE AMOUNT OF PRECIPITATION CONSUMED THROUGH  
26 EVAPOTRANSPIRATION OF PREEXISTING NATURAL VEGETATIVE COVER,  
27 THERE IS A REBUTTABLE PRESUMPTION THAT THE FACTORS ARE  
28 APPROPRIATE.

29 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, **amend**  
30 (4) (a) (IV) and (5) (a) (IV) as follows:

31 **37-92-308. Substitute water supply plans - special procedures**  
32 **for review - water adjudication cash fund - legislative declaration -**  
33 **repeal.** (4) (a) Beginning January 1, 2002, if an application for approval  
34 of a plan for augmentation, rotational crop management contract, or  
35 change of water right has been filed with a water court and the court has  
36 not issued a decree, the state engineer may approve the temporary  
37 operation of such plan, contract, or change of water right as a substitute  
38 water supply plan if the following conditions are met:

39 (IV) (A) The state engineer, after consideration of the comments  
40 received, has determined that the operation and administration of such  
41 plan will replace all out-of-priority depletions in time, location, and

1 amount and will otherwise prevent injury to other water rights and  
2 decreed conditional water rights, including water quality and continuity  
3 to meet the requirements of use to which the senior appropriation has  
4 normally been put, pursuant to section 37-80-120 (3), and will not impair  
5 compliance with any interstate compacts.

6 (B) Notwithstanding any limitations regarding phreatophytes or  
7 impermeable surfaces that would otherwise apply pursuant to section  
8 37-92-103 (9) or 37-92-501 (4) (b) (III), for any precipitation harvesting  
9 pilot project selected pursuant to section 37-60-115 (6) that has filed an  
10 application for a permanent augmentation plan in water court, the  
11 ~~out-of-priority depletions shall be the net depletion as defined in section~~  
12 ~~37-60-115 (6) (c) (H) (B)~~ APPLICANT SHALL FULLY AUGMENT ANY  
13 PRECIPITATION CAPTURED OUT OF PRIORITY THAT WOULD OTHERWISE  
14 HAVE ACCRUED TO A NATURAL STREAM; EXCEPT THAT, IN DETERMINING  
15 THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY  
16 PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO  
17 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL  
18 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY  
19 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR  
20 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
21 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS  
22 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI). As a  
23 condition of approving a substitute water supply plan for a pilot project  
24 pursuant to this subsection (4), the state engineer shall have the authority  
25 to require the project sponsor to replace any ongoing delayed depletions  
26 after the water use plan associated with a precipitation harvesting pilot  
27 project has ceased.

28 (C) The state engineer shall impose such terms and conditions as  
29 are necessary to ensure that these standards are met. In making such  
30 determinations, the state engineer shall not be required to hold any formal  
31 hearings or conduct any other formal proceedings, but may conduct a  
32 hearing or formal proceeding if the state engineer finds it necessary to  
33 address the issues.

34 (5) (a) Beginning January 1, 2002, for new water use plans  
35 involving out-of-priority diversions or a change of water right, if no  
36 application for approval of a plan for augmentation or a change of water  
37 right has been filed with a water court and the water use plan or change  
38 proposed and the depletions associated with such water use plan or  
39 change will be for a limited duration not to exceed five years, except as  
40 otherwise provided in subparagraph (II) of paragraph (b) of this  
41 subsection (5), the state engineer may approve such plan or change as a

1 substitute water supply plan if the following conditions are met:  
2 (IV) (A) The state engineer, after consideration of the comments  
3 received, has determined that the operation and administration of such  
4 plan will replace all out-of-priority depletions in time, location, and  
5 amount and will otherwise prevent injury to other water rights and  
6 decreed conditional water rights, including water quality and continuity  
7 to meet the requirements of use to which the senior appropriation has  
8 normally been put, pursuant to section 37-80-120 (3), and will not impair  
9 compliance with any interstate compacts.

10 (B) NOTWITHSTANDING ANY LIMITATIONS REGARDING  
11 PHREATOPHYTES OR IMPERMEABLE SURFACES THAT WOULD OTHERWISE  
12 APPLY PURSUANT TO SECTION 37-92-103 (9) OR 37-92-501 (4) (b) (III),  
13 FOR ANY PRECIPITATION HARVESTING PILOT PROJECT SELECTED PURSUANT  
14 TO SECTION 37-60-115 (6), THE APPLICANT SHALL FULLY AUGMENT ANY  
15 PRECIPITATION CAPTURED OUT OF PRIORITY THAT WOULD OTHERWISE  
16 HAVE ACCRUED TO A NATURAL STREAM; EXCEPT THAT, IN DETERMINING  
17 THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY  
18 PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO  
19 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL  
20 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY  
21 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR  
22 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE  
23 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS  
24 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI).

25 (C) The state engineer shall impose such terms and conditions as  
26 are necessary to ensure that these standards are met. In making the  
27 determinations specified in this subparagraph (IV), the state engineer  
28 shall not be required to hold any formal hearings or conduct any other  
29 formal proceedings, but may conduct a hearing or formal proceeding if  
30 the state engineer finds it necessary to address the issues."

31 Renumber succeeding section accordingly.

32 Page 5, line 22, strike "on" and substitute "before, on,".

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