

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL 8

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LLS NO. 14-0245.01 Thomas Morris x4218

INTERIM COMMITTEE BILL

Water Resources Review Committee

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF SURFACE WATER TO REPLACE**
102 **OUT-OF-PRIORITY GROUNDWATER DEPLETIONS WITHOUT**
103 **REQUIRING ADDITIONAL APPROVAL IF THE REPLACEMENT**
104 **OBLIGATION HAS ALREADY BEEN DETERMINED.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. The bill allows the use of surface water to replace or augment out-of-priority groundwater

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

depletions without the necessity of filing an application for a change of water right if the replacement obligation has already been determined, both the surface water and the well have been decreed or permitted for use on the same parcel of land, and such use of the surface water does not result in any enlargement in the use of water. The state engineer or ground water commission must adopt a policy outlining when such replacement or augmentation can be used. **Section 1** of the bill amends the replacement obligation statute for designated ground water, **section 2** alters the definition of a change of a water right, and **section 3** amends the augmentation and replacement statute for tributary water.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 37-90-107.5
3 as follows:

4 **37-90-107.5. Replacement plans.** (1) Any person desiring to
5 obtain an approval of a replacement plan within the boundaries of a
6 designated ground water basin pursuant to ~~the provisions of this article~~
7 ~~shall make an application~~ MUST APPLY to the commission in a form
8 prescribed by the commission. The applicant ~~shall~~ MUST also submit a
9 summary of the application to the commission for publication. If the
10 commission determines the application to be complete, it shall be
11 published pursuant to section 37-90-112 within sixty days after the filing
12 of ~~such an~~ THE application. If an objection is filed, a hearing shall be held
13 pursuant to section 37-90-113. The commission shall approve the
14 replacement plan if the commission determines that the replacement plan
15 meets the requirements of this article and rules adopted by the
16 commission. A replacement plan shall not be used as a vehicle for
17 avoiding limitations on existing wells, including ~~but not limited to~~
18 restrictions on change of well location. Therefore, before approving any
19 replacement plan that includes existing wells, the commission shall
20 require independent compliance with all rules governing those existing

1 wells in addition to compliance with any guidelines or rules governing
2 replacement plans.

3 (2) IF A REPLACEMENT OBLIGATION HAS ALREADY BEEN
4 DETERMINED BY DECREE, PERMIT, OR RULE, REGARDLESS OF WHETHER
5 THE SOURCE OF REPLACEMENT WATER HAS BEEN SPECIFIED, THE
6 REPLACEMENT OBLIGATION MAY BE MET BY THE USE OF SURFACE WATER
7 IF, AS SPECIFIED BY A POLICY ADOPTED BY THE COMMISSION:

8 (a) BOTH THE SURFACE WATER AND THE WELL WHOSE DEPLETIONS
9 ARE BEING REPLACED HAVE BEEN DECREED OR PERMITTED FOR USE ON THE
10 SAME PARCEL OF LAND; AND

11 (b) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT
12 GROUND WATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN
13 THE USE OF WATER.

14 **SECTION 2.** In Colorado Revised Statutes, 37-92-103, **amend**
15 (5) as follows:

16 **37-92-103. Definitions.** As used in this article, unless the context
17 otherwise requires:

18 (5) "Change of water right" means a change in the type, place, or
19 time of use, a change in the point of diversion, a change from a fixed
20 point of diversion to alternate or supplemental points of diversion, a
21 change from alternate or supplemental points of diversion to a fixed point
22 of diversion, a change in the means of diversion, a change in the place of
23 storage, a change from direct application to storage and subsequent
24 application, a change from storage and subsequent application to direct
25 application, a change from a fixed place of storage to alternate places of
26 storage, a change from alternate places of storage to a fixed place of
27 storage, or any combination of such changes. The term "change of water

1 right":

2 (a) Includes changes of conditional water rights as well as changes
3 of water rights.

4 (b) DOES NOT INCLUDE THE USE OF SURFACE WATER TO REPLACE
5 OR AUGMENT OUT-OF-PRIORITY GROUNDWATER DEPLETIONS IF, AS
6 SPECIFIED BY A POLICY ADOPTED BY THE STATE ENGINEER:

7 (I) A REPLACEMENT OR AUGMENTATION OBLIGATION HAS
8 ALREADY BEEN DETERMINED BY DECREE, PERMIT, OR RULE, REGARDLESS
9 OF WHETHER THE SOURCE OF REPLACEMENT OR AUGMENTATION WATER
10 HAS BEEN SPECIFIED;

11 (II) BOTH THE SURFACE WATER AND THE WELL WHOSE DEPLETIONS
12 ARE BEING REPLACED OR AUGMENTED HAVE BEEN DECREED OR PERMITTED
13 FOR USE ON THE SAME PARCEL OF LAND; AND

14 (III) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT
15 GROUND WATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN
16 THE USE OF WATER.

17 **SECTION 3.** In Colorado Revised Statutes, 37-92-305, **amend**
18 (8) (c) as follows:

19 **37-92-305. Standards with respect to rulings of the referee and**
20 **decisions of the water judge.** (8) (c) A plan for augmentation ~~shall be~~
21 is sufficient to permit the continuation of diversions when curtailment
22 would otherwise be required to meet a valid senior call for water, to the
23 extent that the applicant shall provide replacement water necessary to
24 meet the lawful requirements of a senior diverter at the time and location
25 and to the extent the senior would be deprived of his or her lawful
26 entitlement by the applicant's diversion. A proposed plan for
27 augmentation that relies upon a supply of augmentation water that, by

1 contract or otherwise, is limited in duration shall not be denied solely
2 upon the ground that the supply of augmentation water is limited in
3 duration, if the terms and conditions of the plan prevent injury to vested
4 water rights. Said terms and conditions shall require replacement of
5 out-of-priority depletions that occur after any groundwater diversions
6 cease. Decrees approving plans for augmentation shall require that the
7 state engineer curtail all out-of-priority diversions, the depletions from
8 which are not so replaced as to prevent injury to vested water rights. A
9 plan for augmentation may provide procedures to allow additional or
10 alternative sources of replacement water, including water leased on a
11 yearly or less frequent basis, to be used in the plan after the initial decree
12 is entered if the use of said additional or alternative sources is part of a
13 substitute water supply plan approved pursuant to section 37-92-308 or
14 if such sources are decreed for such use; EXCEPT THAT, IF A REPLACEMENT
15 OR AUGMENTATION OBLIGATION HAS ALREADY BEEN DETERMINED BY
16 DECREE, PERMIT, OR RULE, REGARDLESS OF WHETHER THE SOURCE OF
17 REPLACEMENT OR AUGMENTATION WATER HAS BEEN SPECIFIED, THE
18 REPLACEMENT OR AUGMENTATION OBLIGATION MAY BE MET BY THE USE
19 OF SURFACE WATER IF, AS SPECIFIED BY A POLICY ADOPTED BY THE STATE
20 ENGINEER:

21 (I) BOTH THE SURFACE WATER AND THE WELL WHOSE DEPLETIONS
22 ARE BEING REPLACED HAVE BEEN DECREED OR PERMITTED FOR USE ON THE
23 SAME PARCEL OF LAND; AND

24 (II) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT
25 GROUND WATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN
26 THE USE OF WATER.

27 **SECTION 4. Applicability.** This act applies to conduct occurring

1 on or after the effective date of this act.

2 **SECTION 5. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.