

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

DRAFT  
10.8.15

**BILL 8**

LLS NO. 16-0297.01 Thomas Morris x4218

**INTERIM COMMITTEE BILL**

**Water Resources Review Committee**

**BILL TOPIC: "Prohibit Unauthorized Water Diversions"**

**A BILL FOR AN ACT**

101 **CONCERNING ADDITIONAL ENFORCEMENT AUTHORITY TO ADDRESS**  
102 **THE UNAUTHORIZED DIVERSION OF WATER.**

**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 specifies that:
- A person that diverts more than 50 gallons of water from a stream, groundwater, reservoir, ditch, or lake while the source of water from which the person took the water is

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

subject to administration is guilty of a misdemeanor unless the person has an adjudicated water right, including a conditional water right, to take water from that source of water and the right is in priority; and

- A peace officer who has authority to enforce all of the laws of Colorado and the appropriate district attorney may enforce this prohibition.

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

2           **SECTION 1.** In Colorado Revised Statutes, **amend** 37-89-101 as  
3 follows:

4           **37-89-101. Interference with the flow of water - theft -**  
5 **misdemeanor.** (1) Any person who knowingly and willfully cuts, digs,  
6 breaks down, or opens any gate, bank, embankment, or side of any ditch,  
7 canal, flume, feeder, or reservoir, or who knowingly and willfully breaks,  
8 cuts, checks, or otherwise interferes with the flow of water in any  
9 drainage ditch, box drain, or tile drain, or any manhole, or other opening  
10 in any box drain or tile drain, in which such person may be a joint owner,  
11 or which may be the property of another, or in the lawful possession of  
12 another and used for the purpose of drainage, irrigation, manufacturing,  
13 mining, or domestic purposes, with intent to injure any person,  
14 association, or corporation, or for personal gain, unlawfully, with intent  
15 of stealing, taking, or causing to run or pour out of or into such ditch,  
16 canal, reservoir, feeder, flume, drainage ditch, box drain, or tile drain any  
17 water for personal profit, benefit, or advantage, or with intent to check or  
18 change the flow in any such ditch, canal, feeder, flume, drainage ditch,  
19 box drain, or tile drain, to the injury of any other person, association, or  
20 corporation, lawfully in the use of such water or of such ditch, canal,  
21 reservoir, feeder, flume, drainage ditch, box drain, or tile drain, is guilty  
22 of a misdemeanor.

1           (2) A PERSON THAT WITHDRAWS OR DIVERTS MORE THAN FIFTY  
2 GALLONS OF WATER FROM A STREAM, GROUNDWATER, RESERVOIR, DITCH,  
3 OR LAKE WHILE THE SOURCE OF WATER FROM WHICH THE PERSON TOOK  
4 THE WATER IS SUBJECT TO ADMINISTRATION PURSUANT TO ARTICLE 92 OF  
5 THIS TITLE IS GUILTY OF A MISDEMEANOR UNLESS THE PERSON HAS AN  
6 ADJUDICATED WATER RIGHT, INCLUDING A CONDITIONAL WATER RIGHT,  
7 TO TAKE WATER FROM THAT SOURCE OF WATER AND THE RIGHT IS IN  
8 PRIORITY.

9           (3) ~~and~~; Upon conviction ~~thereof~~ OF A VIOLATION OF THIS  
10 SECTION, THE PERSON shall be punished by a fine of not less than fifty  
11 dollars nor more than seven hundred fifty dollars or by imprisonment in  
12 the county jail for not more than ninety days. The court shall further order  
13 that such person make full restitution to the victim of his or her conduct  
14 for the actual damages that were sustained. The amount of such restitution  
15 shall be equal to the actual pecuniary damages sustained by the victim.  
16 The court shall fix the manner and time in which such restitution shall be  
17 made.

18           (4) A PEACE OFFICER, AS THAT TERM IS USED IN ARTICLE 2.5 OF  
19 TITLE 16, C.R.S., WHO HAS AUTHORITY TO ENFORCE ALL OF THE LAWS OF  
20 COLORADO AND THE APPROPRIATE DISTRICT ATTORNEY MAY ENFORCE  
21 THE PROHIBITIONS ESTABLISHED BY THIS SECTION.

22           **SECTION 2. Act subject to petition - effective date -**  
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
24 the expiration of the ninety-day period after final adjournment of the  
25 general assembly (August 10, 2016, if adjournment sine die is on May 11,  
26 2016); except that, if a referendum petition is filed pursuant to section 1  
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part  
2 will not take effect unless approved by the people at the general election  
3 to be held in November 2016 and, in such case, will take effect on the  
4 date of the official declaration of the vote thereon by the governor.

5 (2) This act applies to conduct occurring on or after the applicable  
6 effective date of this act.