

**Second Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 12-0123.01 Thomas Morris x4218

**HOUSE BILL 12-1022**

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**HOUSE SPONSORSHIP**

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

Agriculture, Natural Resources, and Energy

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**A BILL FOR AN ACT**

101 **CONCERNING THE AMOUNT OF WATER THAT PERMITTED MINING**  
102 **OPERATIONS THAT CONSTRUCT IMPERMEABLE AREAS THAT**  
103 **ELIMINATE PREEXISTING NATURAL EVAPOTRANSPIRATION ARE**  
104 **REQUIRED TO REPLACE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Water Resources Review Committee.** Some mining operations construct impermeable areas that capture precipitation and eliminate preexisting natural evapotranspiration. Current law requires that the portion of the captured precipitation that historically reached the stream

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.*

SENATE  
3rd Reading Unam ended  
February 29, 2012

SENATE  
2nd Reading Unam ended  
February 28, 2012

HOUSE  
3rd Reading Unam ended  
January 30, 2012

HOUSE  
2nd Reading Unam ended  
January 26, 2012

must be replaced to prevent injury to senior water rights. However, capturing the amount of water that was lost through plant transpiration or evaporation does not increase the actual stream depletions caused by the mining operation because the evapotranspiration did not historically reach the stream. Current law does not give the mine operator any credit for this reduction in evapotranspiration when calculating the obligation to replace stream depletions unless it is a sand and gravel mine. The bill specifies that for all permitted mining operations, there will be no requirement to replace the amount of historic natural depletion to the waters of the state that was caused by the preexisting natural evapotranspiration on the surface of an area that will be, or that has been, eliminated or made impermeable.

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

2           **SECTION 1.** In Colorado Revised Statutes, 37-80-120, **add** (6)  
3 as follows:

4           **37-80-120. Upstream storage - substitute supply - historic**  
5 **natural depletion.** (6) IN DETERMINING THE QUANTITY OF WATER  
6 REQUIRED AS A SUBSTITUTE SUPPLY TO REPLACE STREAM DEPLETIONS IN  
7 CONNECTION WITH ANY MINING OPERATION AS DEFINED IN SECTION  
8 34-32-103 (8), C.R.S., FOR WHICH A RECLAMATION PERMIT HAS BEEN  
9 OBTAINED AS SET FORTH IN SECTION 34-32-109, C.R.S., THERE IS NO  
10 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL  
11 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE  
12 PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE  
13 SURFACE OF THE AREA THAT WILL BE, OR THAT HAS BEEN, ELIMINATED OR  
14 MADE IMPERMEABLE AS PART OF THE PERMITTED MINING OPERATION. THE  
15 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL  
16 DEPLETION.

17           **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (12)  
18 (c) as follows:

19           **37-92-305. Standards with respect to rulings of the referee and**

1 **decisions of the water judge.** (12) (c) IN DETERMINING THE QUANTITY  
2 OF WATER REQUIRED IN AN AUGMENTATION PLAN TO REPLACE STREAM  
3 DEPLETIONS IN CONNECTION WITH ANY MINING OPERATION AS DEFINED IN  
4 SECTION 34-32-103 (8), C.R.S., FOR WHICH A RECLAMATION PERMIT HAS  
5 BEEN OBTAINED AS SET FORTH IN SECTION 34-32-109, C.R.S., THERE IS NO  
6 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL  
7 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE  
8 PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE  
9 SURFACE OF THE AREA THAT WILL BE, OR THAT HAS BEEN, ELIMINATED OR  
10 MADE IMPERMEABLE AS PART OF THE PERMITTED MINING OPERATION. THE  
11 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL  
12 DEPLETION.

13 **SECTION 3. Act subject to petition - effective date -**  
14 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
15 following the expiration of the ninety-day period after final adjournment  
16 of the general assembly (August 7, 2012, if adjournment sine die is on  
17 May 9, 2012); except that, if a referendum petition is filed pursuant to  
18 section 1 (3) of article V of the state constitution against this act or an  
19 item, section, or part of this act within such period, then the act, item,  
20 section, or part shall not take effect unless approved by the people at the  
21 general election to be held in November 2012 and shall take effect on the  
22 date of the official declaration of the vote thereon by the governor.

23 (2) The provisions of this act shall apply to substitute supply plans  
24 approved and augmentation plans decreed on or after the applicable  
25 effective date of this act.