

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0202.02 Thomas Morris

**HOUSE BILL 10-1159**

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**HOUSE SPONSORSHIP**

**Pace**, Curry, Fischer, Hullinghorst, King S., McFadyen, Scanlan, Vigil

**SENATE SPONSORSHIP**

**Gibbs**, Schwartz, White

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE WATER COURT'S AUTHORITY TO CONSIDER**  
102             **CONDITIONS IN DECREES TO ADDRESS THE EFFECTS OF A WATER**  
103             **EXPORT ACROSS WATER DIVISION BOUNDARIES.**

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**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>.)*

The bill requires a water judge to consider, in decrees for water rights, leases of water for at least 10 years, or changes of use of water rights that divert at least 1000 acre-feet of consumptive use per year from one water division into another, terms and conditions to ensure that

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.*

present and prospective beneficial uses of water within the water division from which water would be diverted are not impaired or increased in cost as a result of the transdivision diversion.

These requirements will be deemed to have been met if the applicant has reached a mitigation agreement with the water conservation district and conservancy districts from within whose boundaries the waters are proposed for diversion or within whose boundaries water would be purchased for exchange and the terms and conditions of the mitigation agreement are included in the decree. Districts that propose to enter into such a mitigation agreement are required to notify the public of, and hold a public meeting on, the proposed terms of the agreement.

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

2 **SECTION 1.** 37-92-305, Colorado Revised Statutes, is amended  
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **37-92-305. Standards with respect to rulings of the referee and**  
5 **decisions of the water judge.** (18) (a) IN A PROCEEDING BEFORE A  
6 WATER COURT FOR APPROVAL OF A WATER RIGHTS DECREE SPECIFIED IN  
7 PARAGRAPH (e) OF THIS SUBSECTION (18) THAT ALLOWS THE DIVERSION  
8 OF AT LEAST ONE THOUSAND ACRE-FEET OF CONSUMPTIVE USE ANNUALLY  
9 FROM ONE WATER DIVISION TO ANOTHER, EITHER DIRECTLY OR BY  
10 EXCHANGE, THE WATER JUDGE SHALL INCLUDE TERMS AND CONDITIONS IN  
11 THE DECREE TO ENSURE THAT PRESENT AND PROSPECTIVE BENEFICIAL  
12 USES OF WATER WITHIN THE WATER DIVISION FROM WHICH WATER WOULD  
13 BE DIVERTED ARE NOT IMPAIRED OR INCREASED IN COST AS A RESULT OF  
14 THE TRANSDIVISION DIVERSION.

15 (b) THIS SUBSECTION (18) IS SATISFIED IF:

16 (I) THE WATER RIGHTS APPLICANT DEMONSTRATES THAT IT HAS  
17 ENTERED INTO A MITIGATION AGREEMENT WITH ALL WATER  
18 CONSERVATION AND WATER CONSERVANCY DISTRICTS WITHIN WHOSE  
19 BOUNDARIES THE PROPOSED POINT OF DIVERSION IS **LOCATED**, WITHIN

1 WHOSE BOUNDARIES WATER WOULD BE PURCHASED FOR EXCHANGE, OR  
2 WITHIN WHOSE BOUNDARIES IS LOCATED THE STREAM OR RIVER UPSTREAM  
3 OF THE PROPOSED POINT OF DIVERSION; AND

4 (II) THE PROVISIONS OF THE MITIGATION AGREEMENT ARE  
5 INCLUDED AS ENFORCEABLE TERMS AND CONDITIONS OF THE DECREE.

6 (c) PRIOR TO FINALIZING A MITIGATION AGREEMENT PURSUANT TO  
7 PARAGRAPH (b) OF THIS SUBSECTION (18), A WATER CONSERVATION OR  
8 WATER CONSERVANCY DISTRICT THAT PROPOSES TO ENTER INTO SUCH AN  
9 AGREEMENT SHALL:

10 (I) (A) AT LEAST FORTY-FIVE DAYS BEFORE FINALIZING THE  
11 MITIGATION AGREEMENT, PROVIDE WRITTEN NOTICE OF THE PROPOSED  
12 AGREEMENT TO THE WATER COURT FOR THE DIVISION FROM WHICH WATER  
13 WOULD BE DIVERTED, THE DIVISION OF WATER RESOURCES, ALL PERSONS  
14 WHO HAVE REQUESTED NOTICE PURSUANT TO SECTION 37-92-308 (6), AND  
15 THE LOCAL BASIN ROUNDTABLE CREATED PURSUANT TO SECTION  
16 37-75-104. THE WRITTEN NOTICE SHALL DESCRIBE THE PURPOSE OF THE  
17 PROPOSED AGREEMENT AND THE SUBJECTS AND ISSUES INVOLVED.

18 (B) AT LEAST TEN DAYS BEFORE FINALIZING THE MITIGATION  
19 AGREEMENT, MAKE A DRAFT OF THE PROPOSED MITIGATION AGREEMENT  
20 AVAILABLE TO ANY PARTY WHO REQUESTS IT;

21 (II) CONSIDER ALL [REDACTED] WRITTEN MATERIALS RECEIVED  
22 FROM INTERESTED PERSONS ON THE CONTENT OF THE MITIGATION  
23 AGREEMENT; AND

24 (III) CONSIDER INCLUDING PROVISIONS IN THE MITIGATION  
25 AGREEMENT THAT ADDRESS THE ECONOMIC AND ECOLOGICAL  
26 CONSEQUENCES OF THE PROPOSED DIVERSION.

27 [REDACTED]

1 (d) AS SOON AS PRACTICABLE AFTER RECEIPT OF SUCH NOTICE, THE  
2 DIVISION OF WATER RESOURCES SHALL PUBLISH THE NOTICE ON ITS WEB  
3 SITE AND THE CLERK OF THE WATER COURT SHALL PUBLISH THE NOTICE IN  
4 THE NEXT WATER COURT RESUME.

5  
6 (e) THIS SUBSECTION (18) APPLIES TO APPLICATIONS FOR  
7 CONDITIONAL WATER RIGHTS, CONDITIONAL APPROPRIATIVE RIGHTS OF  
8 EXCHANGE, AND CHANGES OF WATER RIGHTS; EXCEPT THAT THIS  
9 SUBSECTION (18) DOES NOT APPLY TO APPLICATIONS FOR NONRENEWABLE  
10 CHANGES OF WATER RIGHTS OF LESS THAN TEN YEARS IN DURATION OR TO  
11 DILIGENCE PROCEEDINGS FOR CONDITIONAL WATER RIGHTS THAT WERE  
12 DECREED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (18).

13 (f) NOTHING IN THIS SUBSECTION (18) ABROGATES, IMPAIRS, OR  
14 PREEMPTS ANY STATE OR LOCAL LAND USE OR ENVIRONMENTAL  
15 AUTHORITY.

16 **SECTION 2. Act subject to petition - effective date -**  
17 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
18 following the expiration of the ninety-day period after final adjournment  
19 of the general assembly (August 11, 2010, if adjournment sine die is on  
20 May 12, 2010); except that, if a referendum petition is filed pursuant to  
21 section 1 (3) of article V of the state constitution against this act or an  
22 item, section, or part of this act within such period, then the act, item,  
23 section, or part shall not take effect unless approved by the people at the  
24 general election to be held in November 2010 and shall take effect on the  
25 date of the official declaration of the vote thereon by the governor.

26 (2) The provisions of this act shall apply to applications for water  
27 right decrees filed on or after the applicable effective date of this act.