

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0446.02 Thomas Morris x4218

HOUSE BILL 14-1218

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HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

(None),

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House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE USE OF SURFACE WATER TO REPLACE  
102 OUT-OF-PRIORITY GROUNDWATER DEPLETIONS WITHOUT  
103 REQUIRING ADDITIONAL WATER COURT APPROVAL PURSUANT  
104 TO A STREAMLINED APPROACH ADOPTED BY THE STATE  
105 ENGINEER AS A PILOT PROJECT.

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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/bills summaries>.)*

The bill allows the use of surface water to replace or augment

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.

out-of-priority groundwater depletions without the necessity of filing an application for a change of water right if both the surface water and the well have been decreed or permitted for use on the same parcel of land, the use of the surface water does not result in any enlargement in the use of water, and the use complies with a rule adopted by the state engineer. **Section 1** of the bill alters the definition of a change of a water right, and **section 2** amends the augmentation and replacement statute for tributary water. **Section 3** authorizes the state engineer to adopt the rule as a pilot project and repeals the authority on September 1, 2020.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend**  
3 (5) as follows:

4 **37-92-103. Definitions.** As used in this article, unless the context  
5 otherwise requires:

- 6 (5) (a) "Change of water right" means:
- 7 (I) A change:
  - 8 (A) In the type, place, or time of use; ~~a change~~
  - 9 (B) In the point of diversion; ~~a change~~
  - 10 (C) From a fixed point of diversion to alternate or supplemental  
11 points of diversion; ~~a change~~
  - 12 (D) From alternate or supplemental points of diversion to a fixed  
13 point of diversion; ~~a change~~
  - 14 (E) In the means of diversion; ~~a change~~
  - 15 (F) In the place of storage; ~~a change~~
  - 16 (G) From direct application to storage and subsequent application;  
17 ~~a change~~
  - 18 (H) From storage and subsequent application to direct application;  
19 ~~a change~~
  - 20 (I) From a fixed place of storage to alternate places of storage; ~~a~~

1 **change**

2 (J) From alternate places of storage to a fixed place of storage; or

3 (II) Any combination of ~~such~~ changes SPECIFIED IN  
4 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

5 (b) The term "change of water right":

6 (I) Includes changes of conditional water rights as well as changes  
7 of water rights.

8 (II) DOES NOT INCLUDE THE USE OF SURFACE WATER TO REPLACE  
9 OR AUGMENT OUT-OF-PRIORITY GROUNDWATER DEPLETIONS IF, AS  
10 SPECIFIED BY A RULE ADOPTED BY THE STATE ENGINEER PURSUANT TO  
11 SECTION 37-92-501 (1) (c):

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

15 (B) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT  
16 GROUNDWATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN  
17 THE USE OF WATER.

18 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **amend**  
19 (8) (c) as follows:

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

1 augmentation that relies upon a supply of augmentation water that, by  
2 contract or otherwise, is limited in duration shall not be denied solely  
3 upon the ground that the supply of augmentation water is limited in  
4 duration, if the terms and conditions of the plan prevent injury to vested  
5 water rights. Said terms and conditions shall require replacement of  
6 out-of-priority depletions that occur after any groundwater diversions  
7 cease. Decrees approving plans for augmentation shall require that the  
8 state engineer curtail all out-of-priority diversions, the depletions from  
9 which are not so replaced as to prevent injury to vested water rights.

10 (II) A plan for augmentation may provide procedures to allow  
11 additional or alternative sources of replacement water, including water  
12 leased on a yearly or less frequent basis, to be used in the plan after the  
13 initial decree is entered if the use of ~~said~~ THE additional or alternative  
14 sources is part of a substitute water supply plan approved pursuant to  
15 section 37-92-308 or if such sources are decreed for such use; EXCEPT  
16 THAT REPLACEMENT OR AUGMENTATION OBLIGATIONS MAY BE MET BY  
17 THE USE OF SURFACE WATER IF, AS SPECIFIED BY A RULE ADOPTED BY THE  
18 STATE ENGINEER PURSUANT TO SECTION 37-92-501 (1) (c):

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

22 (B) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT  
23 GROUNDWATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN  
24 THE USE OF WATER.

25 **SECTION 3.** In Colorado Revised Statutes, 37-92-501, **amend**  
26 (1) as follows:

27 **37-92-501. Jurisdiction over water - rules - replacement**

1 **obligation - repeal.** (1) (a) The state engineer and the division engineers  
2 shall administer, distribute, and regulate the waters of the state in  
3 accordance with the constitution of the state of Colorado, ~~the provisions~~  
4 ~~of~~ this article and other applicable laws, and written instructions and  
5 orders of the state engineer, in conformity with such constitution and  
6 laws, and no other official, board, commission, department, or agency,  
7 except as provided in this article and article 8 of title 25, C.R.S., has  
8 jurisdiction and authority with respect to said administration, distribution,  
9 and regulation.

10 (b) It is the legislative intent that the operation of this section shall  
11 not be used to allow groundwater withdrawal ~~which~~ THAT would deprive  
12 senior surface rights of the amount of water to which ~~said~~ THE surface  
13 rights would have been entitled in the absence of ~~such~~ THE groundwater  
14 withdrawal and that groundwater diversions shall ~~not~~ NEITHER be  
15 curtailed nor required to replace water withdrawn, for the benefit of  
16 surface right priorities, even though such surface right priorities be senior  
17 in priority date, when, assuming the absence of groundwater withdrawal  
18 by junior priorities, water would not have been available for diversion by  
19 ~~such~~ THE surface right under the priority system. The state engineer may  
20 adopt rules ~~and regulations~~ to assist in, but not as a prerequisite to, the  
21 performance of the foregoing duties.

22 (c) (I) BY JULY 1, 2015, THE STATE ENGINEER MAY ADOPT A PILOT  
23 PROGRAM BY RULE THAT SPECIFIES A STREAMLINED APPROACH, SUCH AS  
24 THE LEASE FOLLOWING TOOL DEVELOPED BY THE COLORADO WATER  
25 CONSERVATION BOARD IN CONSULTATION WITH THE STATE ENGINEER  
26 PURSUANT TO SECTION 37-60-115 (8) (b) (III), FOR DETERMINING THE USE  
27 OF SURFACE WATER, INCLUDING HISTORICAL CONSUMPTIVE USE, RETURN

1 FLOWS, THE POTENTIAL FOR MATERIAL INJURY TO OTHER WATER RIGHTS,  
2 AND CONDITIONS TO PREVENT MATERIAL INJURY, TO MEET WELL  
3 REPLACEMENT OBLIGATIONS. THE STATE ENGINEER MUST ENSURE THAT  
4 THE CALCULATION OF REPLACEMENT OR AUGMENTATION OBLIGATIONS  
5 PURSUANT TO THE STREAMLINED APPROACH DOES NOT RESULT IN INJURY  
6 TO DECREED WATER RIGHTS. THE RULE MAY APPLY IN UP TO FIVE WATER  
7 DIVISIONS OR SUB-BASINS. THE RULE MUST SPECIFY THAT REPLACEMENT  
8 OR AUGMENTATION OBLIGATIONS MAY BE MET BY THE USE OF SURFACE  
9 WATER IF:

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

13 (B) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT  
14 GROUNDWATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN  
15 THE USE OF WATER.

16 (II) THIS PARAGRAPH (C) IS REPEALED, EFFECTIVE SEPTEMBER 1,  
17 2020.

18 **SECTION 4. Applicability.** This act applies to conduct occurring  
19 on or after the effective date of this act.

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