

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0556.01 Thomas Morris x4218

SENATE BILL 16-128

SENATE SPONSORSHIP

Hodge,

HOUSE SPONSORSHIP

Arndt,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING THE ABILITY TO AMEND LIMITED TERMS THAT GOVERN
102 THE OPERATION OF A WATER RIGHT WITHOUT REOPENING ALL
103 TERMS GOVERNING THE PREVIOUS APPROVAL OF THE
104 OPERATION.

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 allows for amendments to decreed plans for augmentation (**sections 1 and 2** of the bill) and approved substitute water supply plans (**section 3**), or specific portions thereof, without reopening the entire

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.

decree or approval.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-304, **amend**
3 (6) as follows:

4 **37-92-304. Proceedings by the water judge.** (6) (a) Any
5 decision of the water judge as specified in subsection (5) of this section
6 dealing with a change of water right, implementation of a rotational crop
7 management contract, or a plan for augmentation ~~shall~~ MUST include the
8 condition that the approval of ~~such~~ THE change, contract, or plan ~~shall be~~
9 IS subject to reconsideration by the water judge on the question of injury
10 to the vested rights of others for such period after the entry of ~~such~~ THE
11 decision as is necessary or desirable to preclude or remedy any such
12 injury. ~~Such~~ THE WATER JUDGE SHALL DETERMINE THE condition setting
13 forth the period allowed for reconsideration ~~shall be determined by the~~
14 ~~water judge~~ after making specific findings and conclusions including,
15 when applicable, the historical use to which the water rights involved
16 were put, if any, and the proposed future use of the water rights involved.
17 The water judge shall specify ~~such~~ THE period in the decision, but the
18 period may be extended upon further decision by the water judge that the
19 nonoccurrence of injury ~~shall~~ HAS not ~~have~~ been conclusively established.

20 (b) THE WATER JUDGE, SUA SPONTE, OR ANY PARTY MAY INVOKE
21 RETAINED JURISDICTION IN ORDER TO MODIFY A DECREED PLAN FOR
22 AUGMENTATION TO REFLECT NEW TECHNICAL INFORMATION AFFECTING
23 THE OPERATION OF THE DECREED AUGMENTATION PLAN.

24 (c) ~~Any~~ THE decision may contain any other provision that the
25 water judge deems proper in determining the rights and interests of the

1 persons involved. All decisions of the water judge, including decisions as
2 to the period of reconsideration and extension thereof, ~~shall~~ become a
3 judgment and decree as specified in this article and ~~be~~ ARE appealable
4 upon entry, notwithstanding conditions subjecting the decisions to
5 reconsideration on the question of injury to the vested rights of others as
6 provided in this subsection (6).

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

9 **37-92-305. Standards with respect to rulings of the referee and**
10 **decisions of the water judge.** (8) (c) (I) A plan for augmentation ~~shall~~
11 MUST be sufficient to permit the continuation of diversions when
12 curtailment would otherwise be required to meet a valid senior call for
13 water, to the extent that the applicant shall provide replacement water
14 necessary to meet the lawful requirements of a senior diverter at the time
15 and location and to the extent the senior would be deprived of his or her
16 lawful entitlement by the applicant's diversion.

17 (II) A proposed plan for augmentation that relies upon a supply of
18 augmentation water that, by contract or otherwise, is limited in duration
19 shall not be denied solely upon the ground that the supply of
20 augmentation water is limited in duration, if the terms and conditions of
21 the plan prevent injury to vested water rights. ~~Said~~ THE terms and
22 conditions ~~shall~~ MUST require replacement of out-of-priority depletions
23 that occur after any groundwater diversions cease. Decrees approving
24 plans for augmentation ~~shall~~ MUST require that the state engineer curtail
25 all out-of-priority diversions, the depletions from which are not so
26 replaced as to prevent injury to vested water rights.

27 (III) A plan for augmentation may provide procedures to allow:

1 (A) Additional or alternative sources of replacement water,
2 including water leased on a yearly or less frequent basis, to be used in the
3 plan after the initial decree is entered if the use of ~~said~~ THE additional or
4 alternative sources is part of a substitute water supply plan approved
5 pursuant to section 37-92-308 or if ~~such~~ THE sources are decreed for such
6 use; OR

7 (B) AN AMENDMENT OF THE PLAN OR SPECIFIC PORTIONS OF THE
8 PLAN TO REFLECT NEW TECHNICAL INFORMATION AFFECTING THE
9 OPERATION OF THE DECREED AUGMENTATION PLAN. AN AMENDMENT
10 REOPENS ONLY THE PORTION OF THE DECREE TO WHICH IT APPLIES AND
11 DOES NOT REOPEN THE ENTIRE PLAN FOR AUGMENTATION.

12 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, **amend**
13 (5) (a) (IV) (C); and **add** (4) (d) as follows:

14 **37-92-308. Substitute water supply plans - special procedures**
15 **for review - water adjudication cash fund - legislative declaration -**
16 **repeal.** (4) (d) AFTER THE STATE ENGINEER HAS APPROVED A REQUEST
17 FOR A SUBSTITUTE WATER SUPPLY PLAN, THE APPLICANT MAY SEEK AN
18 AMENDMENT TO ONE OR MORE SPECIFIC PORTIONS OF THE PLAN BASED ON
19 NEW TECHNICAL INFORMATION OR OPERATIONAL EXPERIENCE. AN
20 AMENDMENT REOPENS ONLY THAT PORTION OF THE PLAN TO WHICH IT
21 APPLIES AND DOES NOT REOPEN THE ENTIRE SUBSTITUTE WATER SUPPLY
22 PLAN.

23 (5) (a) Beginning January 1, 2002, for new water use plans
24 involving out-of-priority diversions or a change of water right, if no
25 application for approval of a plan for augmentation or a change of water
26 right has been filed with a water court and the water use plan or change
27 proposed and the depletions associated with ~~such~~ THE water use plan or

1 change will be for a limited duration not to exceed five years, except as
2 otherwise provided in subparagraph (II) of paragraph (b) of this
3 subsection (5), the state engineer may approve such plan or change as a
4 substitute water supply plan if the following conditions are met:

5 (IV) (C) The state engineer shall impose such terms and
6 conditions as are necessary to ensure that these standards are met.
7 REPLACEMENT OF DEPLETIONS MAY BE MADE DURING THE LIMITED
8 DURATION APPROVED, NOT TO EXCEED FIVE YEARS EXCEPT AS SPECIFIED
9 IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (5),
10 SUBJECT TO THE STATE ENGINEER'S DETERMINATION OF THE DRY-YEAR
11 YIELD OF THE REPLACEMENT SUPPLY. In making the determinations
12 specified in this subparagraph (IV), the state engineer ~~shall~~ IS NOT BE
13 required to hold any formal hearings or conduct any other formal
14 proceedings, but may conduct a hearing or formal proceeding if the state
15 engineer finds it necessary to address the issues.

16 **SECTION 4. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly (August 10, 2016, if adjournment sine die is on May 11,
20 2016); except that, if a referendum petition is filed pursuant to section 1
21 (3) of article V of the state constitution against this act or an item, section,
22 or part of this act within such period, then the act, item, section, or part
23 will not take effect unless approved by the people at the general election
24 to be held in November 2016 and, in such case, will take effect on the
25 date of the official declaration of the vote thereon by the governor.

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