

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0997.03 Jennifer Berman x3286

HOUSE BILL 19-1271

HOUSE SPONSORSHIP

Arndt,

SENATE SPONSORSHIP

Coram,

House Committees
Rural Affairs & Agriculture

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A CLARIFICATION OF THE AUTHORITY OF THE**
102 **COLORADO WATER CONSERVATION BOARD TO AUGMENT**
103 **STREAM FLOWS WITH ACQUIRED WATER RIGHTS THAT HAVE**
104 **BEEN PREVIOUSLY DECREED FOR AUGMENTATION USE.**

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://leg.colorado.gov>.)

The bill clarifies that the Colorado water conservation board may augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 10, 2019

previously quantified and changed to include augmentation use, without a further change of the water right being required.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-102, **amend**
3 (3) introductory portion; and **add** (3)(f) as follows:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**
5 **water law.** (3) Further recognizing the need to correlate the activities of
6 mankind with some reasonable preservation of the natural environment,
7 the Colorado water conservation board is hereby vested with the
8 exclusive authority, on behalf of the people of the state of Colorado, to
9 appropriate in a manner consistent with sections 5 and 6 of article XVI of
10 the state constitution, such waters of natural streams and lakes as the
11 board determines may be required for minimum stream flows or for
12 natural surface water levels or volumes for natural lakes to preserve the
13 natural environment to a reasonable degree. In the adjudication of water
14 rights pursuant to this ~~article~~ ARTICLE 92 and other applicable law, no
15 other person or entity shall be granted a decree adjudicating a right to
16 water or interests in water for instream flows in a stream channel between
17 specific points, or for natural surface water levels or volumes for natural
18 lakes, for any purpose whatsoever. The board also may acquire, by grant,
19 purchase, donation, bequest, devise, lease, exchange, or other contractual
20 agreement, from or with any person, including any governmental entity,
21 such water, water rights, or interests in water that are not on the division
22 engineer's abandonment list in such amount as the board determines is
23 appropriate for stream flows or for natural surface water levels or
24 volumes for natural lakes to preserve or improve the natural environment
25 to a reasonable degree. At the request of any person, including any

1 governmental entity, the board shall determine in a timely manner, not to
2 exceed one hundred twenty days unless further time is granted by the
3 requesting person or entity, what terms and conditions it will accept in a
4 contract or agreement for such acquisition. Any contract or agreement
5 executed between the board and any person or governmental entity that
6 provides water, water rights, or interests in water to the board shall be
7 enforceable by either party thereto as a water matter under this ~~article~~
8 ARTICLE 92, according to the terms of the contract or agreement. The
9 board shall adopt criteria for evaluating proposed contracts or agreements
10 for leases or loans of water, water rights, or interests in water under this
11 subsection (3), including but not limited to, criteria addressing public
12 notice, the extent to which the leased or loaned water will benefit the
13 natural environment to a reasonable degree, and calculation of the
14 compensation paid to the lessor of the water based upon the use of the
15 water after the term of the lease. As a condition of approval of a proposed
16 contract or agreement for a lease or loan of water, water rights, or
17 interests in water pursuant to this subsection (3), the board shall obtain
18 confirmation from the division engineer that the proposal is administrable
19 and is capable of meeting all applicable statutory requirements. All
20 contracts or agreements entered into by the board for leases or loans of
21 water, water rights, or interests in water pursuant to this subsection (3)
22 shall require the board to maintain records of how much water the board
23 uses under the contract or agreement each year it is in effect and to install
24 any measuring devices deemed necessary by the division engineer to
25 administer the contract or agreement and to measure and record how
26 much water flows out of the reach after use by the board under the
27 contract or agreement, unless a measuring device already exists on the

1 stream that meets the division engineer's requirements. All contracts or
2 agreements for water, water rights, or interests in water under this
3 subsection (3) shall provide that, pursuant to the water court decree
4 implementing the contract or agreement, the board or the lessor, lender,
5 or donor of the water may bring about beneficial use of the historical
6 consumptive use of the leased, loaned, or donated water right downstream
7 of the instream flow reach as fully consumable reusable water. The board
8 shall MUST file a change of water right application or other application
9 with the water court AS MAY BE REQUIRED to obtain a decreed right to use
10 water for instream flow purposes under a contract or agreement for a
11 lease or loan of water, water rights, or interests in water pursuant to this
12 subsection (3). The BOARD MUST FILE A WATER COURT APPLICATION WITH
13 THE WATER COURT FOR APPROVAL OF A PLAN FOR AUGMENTATION TO
14 AUGMENT STREAM FLOWS TO PRESERVE OR IMPROVE THE NATURAL
15 ENVIRONMENT TO A REASONABLE DEGREE. FOR A CHANGE OF WATER
16 RIGHT, THE resulting water court decree shall quantify the historical
17 consumptive use of the leased or loaned water right and determine the
18 method by which the historical consumptive use should be quantified and
19 credited during the term of the agreement for the lease or loan of the
20 water right. Said method shall recognize the actual amount of
21 consumptive use available under the leased or loaned water right and
22 shall not result in a reduction of the historical consumptive use of that
23 water right during the term of the lease or loan, except to the extent such
24 reduction is based upon the actual amount of water available under said
25 rights. All water rights under such decrees shall be administered in
26 priority. The board may not accept a donation of water rights that either
27 would require the removal of existing infrastructure without approval of

1 the current owner of such infrastructure or that were acquired by
2 condemnation. The board may use any funds available to it for acquisition
3 of water rights and their conversion to instream flow rights. The board
4 may initiate such applications as it determines are necessary or desirable
5 for utilizing water, water rights, or interests in water appropriated,
6 acquired, or held by the board, including applications for changes of
7 water rights, exchanges, or augmentation plans. THE BOARD MAY,
8 PURSUANT TO A DECREED AUGMENTATION PLAN, AUGMENT STREAM
9 FLOWS TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A
10 REASONABLE DEGREE IN A STREAM REACH AND MAY USE ANY WATER
11 RIGHT FOR WHICH THE HISTORICAL USE HAS PREVIOUSLY BEEN QUANTIFIED
12 AND FOR WHICH A PREVIOUS CHANGE OF THE WATER RIGHT TO INCLUDE
13 AUGMENTATION USE HAS BEEN JUDICIALLY APPROVED WITHOUT A
14 FURTHER CHANGE OF THAT WATER RIGHT BEING REQUIRED; EXCEPT THAT
15 ANY SUCH USE BY THE BOARD IS SUBJECT TO THE IMPOSITION OF ANY
16 TERMS AND CONDITIONS THAT ARE NECESSARY TO PREVENT INJURY TO
17 THE OWNERS OF VESTED WATER RIGHTS OR DECREED CONDITIONAL WATER
18 RIGHTS THAT MAY RESULT FROM SUCH USE. SUCH USE SHALL BE
19 CONSIDERED BY THE REFEREE OR WATER JUDGE, AS THE CASE MAY BE, TO
20 BE A DECREED AUGMENTATION USE SUCH THAT NO CHANGE IS REQUIRED
21 IF SUCH USE DOES NOT VIOLATE THE TERMS AND CONDITIONS OF ANY
22 APPLICABLE DECREES FOR THAT WATER RIGHT. WATER USED TO AUGMENT
23 STREAM FLOWS TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT
24 TO A REASONABLE DEGREE IN A STREAM REACH PURSUANT TO A DECREED
25 PLAN FOR AUGMENTATION SHALL NOT BE DIVERTED WITHIN THAT STREAM
26 REACH BY EXCHANGES, PLANS FOR SUBSTITUTION, PLANS FOR
27 AUGMENTATION, OR OTHER MEANS THAT CAUSE A REDUCTION OF SUCH

1 WATER IN THE STREAM, BUT IS SUBJECT TO SUCH REASONABLE TRANSIT
2 LOSSES WITHIN THAT STREAM REACH AS MAY BE IMPOSED BY THE WATER
3 COURT OR THE STATE OR DIVISION ENGINEER. Prior to the initiation of any
4 such appropriation or acquisition, the board shall request
5 recommendations from the division of parks and wildlife. The board also
6 shall request recommendations from the United States department of
7 agriculture and the United States department of the interior. Nothing in
8 this ~~article~~ ARTICLE 92 shall be construed as authorizing any state agency
9 to acquire water by eminent domain or to deprive the people of the state
10 of Colorado of the beneficial use of those waters available by law and
11 interstate compact. Nothing in this subsection (3) shall impact section
12 37-60-121 (2.5). Any appropriation made pursuant to this subsection (3)
13 shall be subject to the following principles and limitations:

14 (f) THE PORTION OF THIS SUBSECTION (3) THAT CLARIFIES THE
15 COLORADO WATER CONSERVATION BOARD'S AUTHORITY TO USE A PLAN
16 FOR AUGMENTATION TO AUGMENT STREAM FLOWS TO PRESERVE OR
17 IMPROVE THE ENVIRONMENT, AS ENACTED IN HOUSE BILL 19-1271,
18 ENACTED IN 2019:

19 (I) DOES NOT IMPAIR OR IN ANY WAY AFFECT ANY WATER COURT
20 DECREE, ADMINISTRATIVE AUTHORIZATION, OR AGREEMENT THAT ALLOWS
21 WATER DECREED FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY,
22 RECREATIONAL, OR OTHER IN-CHANNEL PURPOSES TO BE USED IN THE
23 NATURAL STREAM CHANNEL FOR THE DECREED PURPOSES;

24 (II) IS NOT INTENDED TO BE THE EXCLUSIVE MEANS OF
25 AUTHORIZING WATER DECREED FOR AUGMENTATION PURPOSES TO BE USED
26 FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY, RECREATIONAL, OR
27 OTHER IN-CHANNEL PURPOSES, INCLUDING THE MAINTENANCE OF

1 DOMINION AND CONTROL OVER THE WATER RELEASED FROM A SPECIFIC
2 RESERVOIR; AND

3 (III) DOES NOT AUTHORIZE, RESTRICT, OR PRECLUDE FUTURE
4 WATER RIGHTS, APPROPRIATIONS, ADMINISTRATIVE AUTHORIZATIONS, OR
5 OTHER AGREEMENTS FOR THE PURPOSES LISTED IN THIS SUBSECTION (3)(f).

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

8 **37-92-305. Standards with respect to rulings of the referee and**
9 **decisions of the water judge - definitions.** (8) (c) A plan for
10 augmentation shall be sufficient to permit the continuation of diversions
11 when curtailment would otherwise be required to meet a valid senior call
12 for water, to the extent that the applicant shall provide replacement water
13 necessary to meet the lawful requirements of a senior diverter at the time
14 and location and to the extent the senior DIVERTER would be deprived of
15 ~~his or her~~ THE SENIOR DIVERTER'S lawful entitlement by the applicant's
16 diversion. A proposed plan for augmentation that relies upon a supply of
17 augmentation water that, by contract or otherwise, is limited in duration
18 shall not be denied solely upon the ground that the supply of
19 augmentation water is limited in duration, if the terms and conditions of
20 the plan prevent injury to vested water rights. Said terms and conditions
21 shall require replacement of out-of-priority depletions that occur after any
22 groundwater diversions cease. Decrees approving plans for augmentation
23 shall require that the state engineer curtail all out-of-priority diversions,
24 the depletions from which are not so replaced as to prevent injury to
25 vested water rights. A plan for augmentation, INCLUDING A COLORADO
26 WATER CONSERVATION BOARD PLAN TO AUGMENT STREAM FLOWS UNDER
27 SECTION 37-92-102 (3), may provide procedures to allow additional or

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

6 **SECTION 3. Act subject to petition - effective date.** This act
7 takes effect at 12:01 a.m. on the day following the expiration of the
8 ninety-day period after final adjournment of the general assembly (August
9 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within such period, then the act, item, section, or part will not take effect
13 unless approved by the people at the general election to be held in
14 November 2020 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.