

CHAPTER 69

WATER AND IRRIGATION

HOUSE BILL 09-1174

BY REPRESENTATIVE(S) Riesberg, Curry, Fischer, Gardner C., McGihon, Pace, Priola;
also SENATOR(S) Hodge, Brophy, Isgar, Lundberg, Renfroe, Romer, Shaffer B., Tochtrop.

AN ACT**CONCERNING THE EXEMPTION OF DEPLETIONS FROM PUMPING THAT OCCURRED PRIOR TO 1974.**

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

SECTION 1. 37-92-305 (8), Colorado Revised Statutes, is amended to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (8) (a) EXCEPT AS SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (8), in reviewing a proposed plan for augmentation and in considering terms and conditions that may be necessary to avoid injury, the referee or the water judge shall consider the depletions from an applicant's use or proposed use of water, in quantity and in time, the amount and timing of augmentation water that would be provided by the applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right.

(b) AS TO DECREES FOR PLANS FOR AUGMENTATION ENTERED IN WATER DIVISION 1 ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (8), AS AMENDED, THE PLAN SHALL NOT REQUIRE THE REPLACEMENT OF OUT-OF-PRIORITY DEPLETIONS CURRENTLY AFFECTING THE RIVER CAUSED BY PUMPING THAT OCCURRED PRIOR TO MARCH 15, 1974. IN THE CASE OF AN AMENDED PLAN FOR AUGMENTATION APPLIED FOR PURSUANT TO THIS PARAGRAPH (b), THE WATER JUDGE MAY REVIEW ALL OF THE TERMS AND CONDITIONS OF THE PLAN.

(c) A plan for augmentation shall be sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his or her lawful entitlement by the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

applicant's diversion. A proposed plan for augmentation that relies upon a supply of augmentation water ~~which~~ THAT, by contract or otherwise, is limited in duration shall not be denied solely upon the ground that the supply of augmentation water is limited in duration, ~~so long as~~ IF the terms and conditions of the plan prevent injury to vested water rights. Said terms and conditions shall require replacement of out-of-priority depletions that occur after any ground water diversions cease. Decrees approving plans for augmentation shall require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights. A plan for augmentation may provide procedures to allow additional or alternative sources of replacement water, including water leased on a yearly or less frequent basis, to be used in the plan after the initial decree is entered if the use of said additional or alternative sources is part of a substitute water supply plan approved pursuant to section 37-92-308 or if such sources are decreed for such use.

SECTION 2. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: March 25, 2009