

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0559.01 Thomas Morris x4218

HOUSE BILL 16-1314

HOUSE SPONSORSHIP

Saine and Humphrey, Neville P., Wist

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Marble,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING TREATMENT OF RISING GROUNDWATER LEVELS AS
102 REPLACING GROUNDWATER DEPLETIONS IN WATER DIVISION 1.

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>.)

Due to rising groundwater levels since 2006, the bill specifies that the state engineer and water judges must treat all out-of-priority groundwater depletions from agricultural wells occurring in water districts 1 through 6 and 64 in water division 1 that accrued between March 15, 1974, and December 31, 2014, as having been fully replaced.

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.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that:

5 (I) The state engineer has existing authority, pursuant to the futile
6 call doctrine, to not require a junior appropriator to curtail a diversion if
7 doing so would not be effective in delivering water to a senior
8 appropriator, and that this authority is ultimately based on the goal of
9 maximizing the beneficial use of water; but

10 (II) The state engineer does not currently have authority to forgo
11 requiring the replacement of water that is specified in a decreed plan of
12 augmentation or substitute water supply plan, even if current stream and
13 aquifer conditions indicate that no injury would result from not requiring
14 the needless replacement; and

15 (III) Consequently, current water administration is resulting in the
16 delivery of excess amounts of water to Nebraska on the main stem of the
17 South Platte river above and beyond what the South Platte river compact
18 requires;

19 (b) Determines that:

20 (I) Localized flooding has occurred in division 1, due in large part
21 to high groundwater levels that have been caused by the curtailment of
22 pumping and the replacement of depletions beyond the level needed to
23 avoid material injury;

24 (II) These high groundwater levels have caused significant
25 increases in the amount of water evaporated from the soil surface and
26 transpiration from vegetation, which is a type of prohibited waste; and

1 (III) The increasing reliability of data on current stream and
2 aquifer conditions resulting from additional studies, monitoring, and the
3 development of the South Platte river decision support system indicate
4 that at some point it will be in the public interest to provide the state
5 engineer with authority to temporarily supercede needless replacement
6 obligations; and

7 (c) Declares that it is in the public interest to maximize the
8 beneficial use of both groundwater and surface water by not requiring the
9 replacement of water when the replacement is not needed.

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

12 **37-92-305. Standards with respect to rulings of the referee and**
13 **decisions of the water judge.** (8) (b) (I) EXCEPT AS SPECIFIED IN
14 SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), as to decrees for plans for
15 augmentation entered in water division 1 on or after August 5, 2009, the
16 plan shall not require the replacement of out-of-priority depletions
17 currently affecting the river caused by pumping that occurred prior to
18 March 15, 1974. In the case of an amended plan for augmentation applied
19 for pursuant to this paragraph (b), the water judge may review all of the
20 terms and conditions of the plan.

21 (II) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN ANY
22 DECREE FOR A PLAN FOR AUGMENTATION OR OTHER REQUIREMENT TO
23 REPLACE GROUNDWATER IN WATER DISTRICTS 1 THROUGH 6 AND 64 IN
24 WATER DIVISION 1 THAT APPLIES TO A WELL THAT PUMPS WATER THAT HAS
25 BEEN DECREED FOR AGRICULTURAL USE, THE STATE ENGINEER AND THE
26 WATER JUDGES SHALL DEEM ALL OUT-OF-PRIORITY GROUNDWATER
27 DEPLETIONS FROM A WELL THAT PUMPS WATER THAT HAS BEEN DECREED

1 FOR AGRICULTURAL USE OCCURRING IN WATER DISTRICTS 1 THROUGH 6
2 AND 64 IN WATER DIVISION 1 THAT ACCRUED BETWEEN MARCH 15, 1974,
3 AND DECEMBER 31, 2014, TO HAVE BEEN FULLY REPLACED BY RISING
4 GROUNDWATER LEVELS SINCE JANUARY 1, 2006.

5 **SECTION 3. Act subject to petition - effective date -**
6 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
7 the expiration of the ninety-day period after final adjournment of the
8 general assembly (August 10, 2016, if adjournment sine die is on May 11,
9 2016); except that, if a referendum petition is filed pursuant to section 1
10 (3) of article V of the state constitution against this act or an item, section,
11 or part of this act within such period, then the act, item, section, or part
12 will not take effect unless approved by the people at the general election
13 to be held in November 2016 and, in such case, will take effect on the
14 date of the official declaration of the vote thereon by the governor.

15 (2) This act applies to groundwater depletions replaced on or after
16 the applicable effective date of this act.