



Legislative Council Staff

Research Note

Version: Final

Date: 3/3/2016

Bill Number

Senate Bill 16-128

Sponsors

**Senator Hodge
Representative Arndt**

Short Title

**Amend Augmentation &
Substitute Water Supply Plans**

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Status

This bill was postponed indefinitely in the Senate Agriculture, Natural Resources, and Energy Committee. This research note reflects the final version of the bill.

Summary

This bill allows water judges or other affected parties to reopen specific portions of augmentation plans or substitute water supply plans (SWSP) for amendments based on new technical information or operational experience without reopening the entire plan. For a SWSP, replacement of depletions may be made during the limited duration period not to exceed five years.

Background

Water court decrees. Water court judges have exclusive jurisdiction over the determination of new water rights, changes of water rights, approval of augmentation plans to protect senior water rights, findings of reasonable progress on water diversion projects, approval of water exchanges, and approvals to use water outside the state. A decree is a water court ruling. An augmentation decree is a water court decree that allows a water user to divert out-of-priority by replacing his or her water depletions made to the stream system.

Division of Water Resources - State Engineer. The Division of Water Resources (DWR) is directed by the State Engineer in the Department of Natural Resources. The State Engineer administers over 150,000 water rights according to water court decrees, issues water well permits, monitors stream flows and water uses, inspects dams for safety, and represents Colorado in interstate water compact proceedings. The State Engineer and staff are charged with inspecting the transportation, storage, and uses of water, and stopping diversions that injure senior water

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rights or are not being used beneficially.

Priority system. Under Colorado's water law, called the *doctrine of prior appropriation*, water is allocated based on the priority of water rights. Priority, also called seniority, is determined by the year in which the application for the water right was filed. When water supplies are insufficient to satisfy all water rights, diversions by junior water rights must be curtailed or stopped until senior water rights are satisfied. Out-of-priority diversions are prohibited unless such diversions can be offset by an approved plan to protect senior water rights from injury.

Augmentation plans. An augmentation plan is a water court-approved plan to protect senior water rights from out-of-priority diversions by junior water rights. Augmentation plans replace the water that junior water users consume, also called depletions, with water that is available at the same time, place, quantity, and quality as would have been available absent the out-of-priority diversion. For example, some augmentation plans use recharge ponds that are filled during periods of surplus water, such as the winter. The water then seeps into the ground and returns to the river when its needed to offset depletions caused by out-of-priority diversions.

Substitute water supply plans. A SWSP is a temporary plan to protect senior water rights from out-of-priority depletions. A SWSP may be approved by the State Engineer while an augmentation plan is pending before the water court. Similar to augmentation plans, SWSP replace the water that junior water users consume with water that is available at the same time, place, quantity, and quality as would have been available absent the out-of-priority diversion. The State Engineer may also approve substitute water supply plans for water exchanges, water uses that will not exceed 5 years, and limited emergency situations affecting public health or safety.

Senate Action

Senate Agriculture, Natural Resources, and Energy Committee (March 3, 2016). At the March 3 committee hearing, the sponsor requested that the bill be postponed indefinitely. There was no testimony.

Relevant Research

Colorado Foundation for Water Education, *Citizen's Guide to Colorado Water Law*, Third Edition (2009).