

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0484.01 Jennifer Berman x3286

HOUSE BILL 20-1037

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HOUSE SPONSORSHIP

Arndt,

SENATE SPONSORSHIP

Coram,

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**House Committees**  
Rural Affairs & Agriculture

**Senate Committees**

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A BILL FOR AN ACT

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

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**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 authorizes the Colorado water conservation board to 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.

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

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-102, **add** (4.5)  
3 as follows:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**  
5 **water law. (4.5) Plan for augmentation to augment stream flows.**

6 (a) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS,  
7 DETERMINES, AND DECLARES THAT THE COLORADO WATER  
8 CONSERVATION BOARD WOULD BENEFIT FROM DIRECTION WITH REGARD  
9 TO WATER COURT APPLICATIONS FOR PLANS FOR AUGMENTATION TO  
10 AUGMENT STREAM FLOWS, AS IDENTIFIED IN SUBSECTION (3) OF THIS  
11 SECTION.

12 (b) **Plan approval.** THE BOARD, EITHER AS SOLE APPLICANT OR  
13 TOGETHER WITH AN OWNER OF A DECREED WATER RIGHT FOR WHICH A  
14 CHANGE OF WATER RIGHTS TO INCLUDE ANY AUGMENTATION USE HAS  
15 BEEN JUDICIALLY APPROVED, MAY FILE AN APPLICATION WITH THE WATER  
16 COURT FOR APPROVAL OF A PLAN FOR AUGMENTATION TO AUGMENT  
17 STREAM FLOWS AND PROTECT AUGMENTATION DELIVERIES MADE  
18 PURSUANT TO THE PLAN FOR AUGMENTATION WITHIN A SPECIFIC STREAM  
19 REACH OR REACHES, AT RATES THE BOARD DETERMINES ARE APPROPRIATE  
20 TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE  
21 DEGREE. THE APPLICATION AND APPROVAL PROCESS FOR A PLAN FOR  
22 AUGMENTATION TO AUGMENT STREAM FLOWS ARE SUBJECT TO THE  
23 FOLLOWING PRINCIPLES AND LIMITATIONS:

24 (I) THE BOARD MAY FILE AN APPLICATION ONLY IF THE OWNER OF  
25 THE WATER RIGHT THAT IS DECREED FOR AUGMENTATION USE IS

1 IDENTIFIED IN THE APPLICATION AND CONSENTS TO THE APPLICATION.

2 (II) THE PROCEDURES, STANDARDS, AND REQUIREMENTS OF THIS  
3 ARTICLE 92 FOR PLANS FOR AUGMENTATION APPLY TO APPLICATIONS FILED  
4 UNDER THIS SUBSECTION (4.5).

5 (III) A PLAN FILED UNDER THIS SUBSECTION (4.5) MUST USE  
6 WATER:

7 (A) FOR AUGMENTATION ONLY;

8 (B) SUBJECT TO WATER RIGHTS FOR WHICH THE HISTORICAL USE  
9 HAS BEEN QUANTIFIED; AND

10 (C) FOR WHICH A CHANGE OF WATER RIGHTS TO INCLUDE ANY  
11 AUGMENTATION USE HAS BEEN JUDICIALLY APPROVED.

12 (IV) IF THE AUGMENTATION WATER RIGHT MEETS THE  
13 REQUIREMENTS OF SUBSECTION (4.5)(b)(III) OF THIS SECTION, NO FURTHER  
14 CHANGE OF THAT AUGMENTATION WATER RIGHT IS REQUIRED.

15 (V) THE USE OF WATER AS PART OF A PLAN FOR AUGMENTATION  
16 TO AUGMENT STREAM FLOWS IS SUBJECT TO THE TERMS AND CONDITIONS  
17 OF ANY APPLICABLE DECREE TO WHICH THAT WATER IS SUBJECT.

18 (VI) ADDITIONAL TERMS AND CONDITIONS MAY BE IMPOSED ON  
19 THE USE OF WATER AS PART OF A PLAN FOR AUGMENTATION TO AUGMENT  
20 STREAM FLOWS IF THE TERMS AND CONDITIONS ARE NECESSARY TO  
21 PREVENT INJURY TO THE OWNERS OF VESTED WATER RIGHTS OR DECREED  
22 CONDITIONAL WATER RIGHTS THAT MAY RESULT FROM THE USE.

23 (VII) AN APPLICANT MUST PROVE THAT THE PLAN FOR  
24 AUGMENTATION TO AUGMENT STREAM FLOWS WILL NOT INJURE OTHER  
25 WATER USERS' UNDECREED EXISTING EXCHANGES OF WATER TO THE  
26 EXTENT THE UNDECREED EXISTING EXCHANGES OF WATER HAVE BEEN  
27 ADMINISTRATIVELY APPROVED BEFORE THE DATE OF THE FILING OF THE

1 APPLICATION FOR APPROVAL OF THE PLAN FOR AUGMENTATION TO  
2 AUGMENT STREAM FLOWS.

3 (VIII) THE AUGMENTATION WATER USED TO AUGMENT STREAM  
4 FLOWS IN A PLAN FOR AUGMENTATION TO AUGMENT STREAM FLOWS SHALL  
5 NOT BE DIVERTED WITHIN THE SPECIFIC STREAM REACH BY AN EXCHANGE,  
6 PLAN FOR SUBSTITUTION, PLAN FOR AUGMENTATION, OR OTHER MEANS  
7 THAT CAUSE A REDUCTION OF THE AUGMENTATION WATER ADDED TO  
8 THAT STREAM REACH. THE AUGMENTATION WATER IS SUBJECT TO SUCH  
9 REASONABLE TRANSIT LOSSES AS MAY BE IMPOSED BY THE WATER COURT  
10 OR THE STATE AND DIVISION ENGINEERS.

11 (IX) IF OPERATION OF A PLAN FOR AUGMENTATION REQUIRES THE  
12 MAKING OF PHYSICAL MODIFICATIONS TO AN EXISTING DIVERSION  
13 STRUCTURE WITHIN A STREAM REACH TO ALLOW THE AUGMENTATION  
14 WATER TO BYPASS THE STRUCTURE, THE OPERATOR OF THE PLAN MUST  
15 BEAR ALL REASONABLE CONSTRUCTION COSTS ASSOCIATED WITH THE  
16 PHYSICAL MODIFICATIONS AND ALL REASONABLE OPERATIONAL AND  
17 MAINTENANCE COSTS INCURRED BY THE OWNER OF THE STRUCTURE THAT  
18 WOULD NOT HAVE BEEN INCURRED IN THE ABSENCE OF THE PHYSICAL  
19 MODIFICATIONS TO THE STRUCTURE.

20 (c) **Saving clause.** THIS SUBSECTION (4.5):

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

26 (II) IS NOT INTENDED TO BE THE EXCLUSIVE MEANS OF  
27 AUTHORIZING WATER DECREED FOR AUGMENTATION PURPOSES TO BE USED

1 FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY, RECREATIONAL, OR  
2 OTHER IN-CHANNEL PURPOSES, INCLUDING THE MAINTENANCE OF  
3 DOMINION AND CONTROL OVER THE WATER RELEASED FROM A SPECIFIC  
4 RESERVOIR;

5 (III) DOES NOT AUTHORIZE, RESTRICT, OR PRECLUDE FUTURE  
6 WATER RIGHTS APPROPRIATIONS, ADMINISTRATIVE AUTHORIZATIONS, OR  
7 OTHER AGREEMENTS FOR THE PURPOSES LISTED IN THIS SUBSECTION (4.5);  
8 AND

9 (IV) DOES NOT AFFECT APPLICATIONS BY THE COLORADO WATER  
10 CONSERVATION BOARD FOR PLANS FOR AUGMENTATION NOT DESCRIBED  
11 IN THIS SUBSECTION (4.5).

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

14 **37-92-305. Standards with respect to rulings of the referee and**  
15 **decisions of the water judge - definitions.** (8) (c) A plan for  
16 augmentation ~~shall~~ MUST be sufficient to permit the continuation of  
17 diversions when curtailment would otherwise be required to meet a valid  
18 senior call for water, to the extent that the applicant shall provide  
19 replacement water necessary to meet the lawful requirements of a senior  
20 diverter at the time and location and to the extent the senior DIVERTER  
21 would be deprived of ~~his or her~~ THE SENIOR DIVERTER'S lawful  
22 entitlement by the applicant's diversion. A proposed plan for  
23 augmentation that relies upon a supply of augmentation water that, by  
24 contract or otherwise, is limited in duration shall not be denied solely  
25 upon the ground that the supply of augmentation water is limited in  
26 duration, if the terms and conditions of the plan prevent injury to vested  
27 water rights. ~~Said~~ THE terms and conditions ~~shall~~ MUST require

1 replacement of out-of-priority depletions that occur after any groundwater  
2 diversions cease. Decrees approving plans for augmentation ~~shall~~ MUST  
3 require that the state engineer curtail all out-of-priority diversions, the  
4 depletions from which are not so replaced as to prevent injury to vested  
5 water rights. A plan for augmentation, INCLUDING A COLORADO WATER  
6 CONSERVATION BOARD PLAN TO AUGMENT STREAM FLOWS PURSUANT TO  
7 SECTION 37-92-102 (4.5), may provide procedures to allow additional or  
8 alternative sources of AUGMENTATION OR replacement water, including  
9 water leased on a yearly or less frequent basis, to be used in the plan after  
10 the initial decree is entered if the use of ~~said~~ THE additional or alternative  
11 sources is part of a substitute water supply plan approved pursuant to  
12 section 37-92-308 or if such sources are decreed for such use.

13           **SECTION 3. Act subject to petition - effective date.** This act  
14 takes effect at 12:01 a.m. on the day following the expiration of the  
15 ninety-day period after final adjournment of the general assembly (August  
16 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a  
17 referendum petition is filed pursuant to section 1 (3) of article V of the  
18 state constitution against this act or an item, section, or part of this act  
19 within such period, then the act, item, section, or part will not take effect  
20 unless approved by the people at the general election to be held in  
21 November 2020 and, in such case, will take effect on the date of the  
22 official declaration of the vote thereon by the governor.