

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0484.01 Jennifer Berman x3286

HOUSE BILL 20-1037

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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.**

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.

HOUSE
3rd Reading Unamended
January 29, 2020

HOUSE
Amended 2nd Reading
January 28, 2020

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

25 (I) THE BOARD MAY FILE AN APPLICATION ONLY IF THE OWNER OF

1 THE WATER RIGHT THAT IS DECREED FOR AUGMENTATION USE IS
2 IDENTIFIED IN THE APPLICATION AND CONSENTS TO THE APPLICATION.

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

6 (III) A PLAN FILED UNDER THIS SUBSECTION (4.5) MUST USE, FOR
7 AUGMENTATION ONLY, WATER RIGHTS:

8 (A) FOR WHICH THE HISTORICAL CONSUMPTIVE USE HAS BEEN
9 QUANTIFIED; AND

10 (B) 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 MUST BE IMPOSED ON
19 THE USE OF WATER AS PART OF A PLAN FOR AUGMENTATION TO AUGMENT
20 STREAM FLOWS AS NECESSARY TO PREVENT INJURY TO THE OWNERS OF
21 VESTED WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS. THE
22 TERMS AND CONDITIONS MUST INCLUDE TERMS AND CONDITIONS TO
23 PREVENT INJURY TO OTHER WATER RIGHTS THAT RESULT FROM ANY
24 CHANGE IN THE TIME, PLACE, OR AMOUNT OF WATER AVAILABLE FOR
25 DIVERSION OR EXCHANGE TO THE EXTENT THAT OTHER APPROPRIATORS
26 HAVE RELIED UPON THE STREAM CONDITIONS THAT RESULTED FROM THE
27 HISTORICAL USE OF THE AUGMENTATION WATER RIGHTS DESCRIBED IN

1 SUBSECTION (4.5)(b)(III) OF THIS SECTION OR ADDED PURSUANT TO
2 SECTION 37-92-305 (8)(c) BEFORE THEIR USE IN THE PLAN FOR
3 AUGMENTATION OF STREAM FLOWS. A JUNIOR APPROPRIATOR IS ENTITLED
4 TO THE CONTINUATION OF STREAM CONDITIONS AS THE CONDITIONS
5 EXISTED AT THE TIME OF THE JUNIOR APPROPRIATOR'S APPROPRIATION.

6 (VII) AN APPLICANT MUST PROVE THAT THE PLAN FOR
7 AUGMENTATION TO AUGMENT STREAM FLOWS WILL NOT INJURE OTHER
8 WATER USERS' UNDECREED EXISTING EXCHANGES OF WATER TO THE
9 EXTENT THE UNDECREED EXISTING EXCHANGES OF WATER HAVE BEEN
10 ADMINISTRATIVELY APPROVED BEFORE THE DATE OF THE FILING OF THE
11 APPLICATION FOR APPROVAL OF THE PLAN FOR AUGMENTATION TO
12 AUGMENT STREAM FLOWS.

13 (VIII) THE AUGMENTATION WATER USED TO AUGMENT STREAM
14 FLOWS IN A PLAN FOR AUGMENTATION TO AUGMENT STREAM FLOWS SHALL
15 NOT BE DIVERTED WITHIN THE SPECIFIC STREAM REACH BY AN EXCHANGE,
16 PLAN FOR SUBSTITUTION, PLAN FOR AUGMENTATION, OR OTHER MEANS
17 THAT CAUSE A REDUCTION OF THE AUGMENTATION WATER ADDED TO
18 THAT STREAM REACH. THE AUGMENTATION WATER IS SUBJECT TO SUCH
19 REASONABLE TRANSIT LOSSES AS MAY BE IMPOSED BY THE WATER COURT
20 OR THE STATE AND DIVISION ENGINEERS.

21 (IX) IF OPERATION OF A PLAN FOR AUGMENTATION REQUIRES THE
22 USE OF, OR MAKING OF PHYSICAL MODIFICATIONS TO, AN EXISTING
23 DIVERSION STRUCTURE WITHIN A STREAM REACH TO ALLOW THE
24 AUGMENTATION WATER TO BYPASS THE STRUCTURE, THE OPERATOR OF
25 THE PLAN MUST HAVE CONSENT FROM THE OWNER OF THE EXISTING
26 STRUCTURE AND BEAR ALL REASONABLE CONSTRUCTION COSTS
27 ASSOCIATED WITH ANY PHYSICAL MODIFICATIONS AND ALL REASONABLE

1 OPERATIONAL AND MAINTENANCE COSTS INCURRED BY THE OWNER OF THE
2 STRUCTURE THAT WOULD NOT HAVE BEEN INCURRED IN THE ABSENCE OF
3 THE PHYSICAL MODIFICATIONS TO THE STRUCTURE.

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

5 (I) DOES NOT IMPAIR OR IN ANY WAY AFFECT ANY WATER COURT
6 DECREE, ADMINISTRATIVE AUTHORIZATION, OR AGREEMENT THAT ALLOWS
7 WATER DECREED FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY,
8 RECREATIONAL, OR OTHER IN-CHANNEL PURPOSES TO BE USED IN THE
9 NATURAL STREAM CHANNEL FOR THE DECREED PURPOSES;

10 (II) IS NOT INTENDED TO BE THE EXCLUSIVE MEANS OF
11 AUTHORIZING WATER DECREED FOR AUGMENTATION PURPOSES TO BE USED
12 FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY, RECREATIONAL, OR
13 OTHER IN-CHANNEL PURPOSES, INCLUDING THE MAINTENANCE OF
14 DOMINION AND CONTROL OVER THE WATER RELEASED FROM A SPECIFIC
15 RESERVOIR;

16 (III) DOES NOT AUTHORIZE, RESTRICT, OR PRECLUDE FUTURE
17 WATER RIGHTS APPROPRIATIONS, ADMINISTRATIVE AUTHORIZATIONS, OR
18 OTHER AGREEMENTS FOR THE PURPOSES LISTED IN THIS SUBSECTION (4.5);
19 AND

20 (IV) DOES NOT AFFECT APPLICATIONS BY THE COLORADO WATER
21 CONSERVATION BOARD FOR PLANS FOR AUGMENTATION NOT DESCRIBED
22 IN THIS SUBSECTION (4.5).

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

25 **37-92-305. Standards with respect to rulings of the referee and**
26 **decisions of the water judge - definitions.** (8) (c) A plan for
27 augmentation ~~shall~~ MUST be sufficient to permit the continuation of

1 diversions when curtailment would otherwise be required to meet a valid
2 senior call for water, to the extent that the applicant shall provide
3 replacement water necessary to meet the lawful requirements of a senior
4 diverter at the time and location and to the extent the senior DIVERTER
5 would be deprived of ~~his or her~~ THE SENIOR DIVERTER'S lawful
6 entitlement by the applicant's diversion. A proposed plan for
7 augmentation that relies upon a supply of augmentation water that, by
8 contract or otherwise, is limited in duration shall not be denied solely
9 upon the ground that the supply of augmentation water is limited in
10 duration, if the terms and conditions of the plan prevent injury to vested
11 water rights. ~~Said~~ THE terms and conditions ~~shall~~ MUST require
12 replacement of out-of-priority depletions that occur after any groundwater
13 diversions cease. Decrees approving plans for augmentation ~~shall~~ MUST
14 require that the state engineer curtail all out-of-priority diversions, the
15 depletions from which are not so replaced as to prevent injury to vested
16 water rights. A plan for augmentation, INCLUDING A COLORADO WATER
17 CONSERVATION BOARD PLAN TO AUGMENT STREAM FLOWS PURSUANT TO
18 SECTION 37-92-102, may provide procedures to allow additional or
19 alternative sources of AUGMENTATION OR replacement water, including
20 water leased on a yearly or less frequent basis, to be used in the plan after
21 the initial decree is entered if the use of ~~said~~ THE additional or alternative
22 sources is part of a substitute water supply plan approved pursuant to
23 section 37-92-308 or if such sources are decreed for such use.

24 **SECTION 3. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2020 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.