

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

DRAFT  
8.31.22

Bill 3

LLS NO. 23-0083.01 Jennifer Berman x3286

INTERIM COMMITTEE BILL

Water Resources and Agriculture Review Committee

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**BILL TOPIC: "Treating Developed Water For Beneficial Use"**

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**A BILL FOR AN ACT**

101 **CONCERNING MEASURES TO INCENTIVIZE THE TREATMENT OF**  
102 **DEVELOPED WATER FOR BENEFICIAL 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/>.)*

**Water Resources and Agriculture Review Committee.** Under current law, developed water, which is nontributary water that has been extracted from the ground as an incidental byproduct of oil and gas drilling or production or of mining operations, may be successively used during oil and gas production or mining operations, but only by the oil and gas or mining operator or the operator's successors, lessees,

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

contractees, or assigns.

**Section 1** of the bill allows successive reuse of developed water if the water is transferred to the owner or operator of a treatment facility for the purpose of treating the water for later beneficial use (treated water). Ownership of, and liability for, the developed water is transferred to the owner or operator of the treatment facility at the time that possession of the water is transferred. The owner or operator of the treatment facility may then sell or otherwise convey the treated water to another person for beneficial use.

To incentivize the treatment of developed water in the state, **section 2** establishes an income tax credit that an owner or operator of a treatment facility may claim upon the sale and delivery of treated water.

**Sections 3 through 5** further incentivize the treatment of developed water by encouraging the division of administration in the department of public health and environment, the oil and gas conservation commission, and the state engineer to work together to expedite the permitting of treatment facilities that treat developed water.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-82-107 as  
3 follows:

4 **37-82-107. Right to reuse developed water - treatment for**  
5 **beneficial use - ownership and liability - definitions.**

6 (1) NOTWITHSTANDING SECTION 37-82-106 (2), SUCCESSIVE USE OF  
7 DEVELOPED WATER IS NOT LIMITED TO THE PERSONAL USE OF THE  
8 DEVELOPER IF THE DEVELOPER TRANSFERS THE WATER TO THE OWNER OR  
9 OPERATOR OF A TREATMENT FACILITY PURSUANT TO SUBSECTION (3) OF  
10 THIS SECTION.

11 (2) DEVELOPED WATER TRANSFERRED TO THE OWNER OR  
12 OPERATOR OF A TREATMENT FACILITY:

13 (a) IS NOT PART OF THE PRIOR APPROPRIATION SYSTEM EVEN  
14 AFTER:

15 (I) THE DEVELOPED WATER HAS BEEN TREATED; AND

16 (II) THE OWNER OR OPERATOR OF THE TREATMENT FACILITY THAT

1 TREATED THE WATER HAS SOLD, TRANSFERRED, OR OTHERWISE CONVEYED  
2 THE TREATED WATER TO ANOTHER PERSON FOR BENEFICIAL USE; AND

3 (b) ONCE TREATED, MAY BE USED SUCCESSIVELY FOR BENEFICIAL  
4 USES.

5 (3)(a) WHEN A DEVELOPER TRANSFERS POSSESSION OF DEVELOPED  
6 WATER TO AN OWNER OR OPERATOR OF A TREATMENT FACILITY FOR THE  
7 PURPOSE OF TREATING THE WATER FOR BENEFICIAL USE, THE OWNERSHIP  
8 OF, AND LIABILITY FOR, THE DEVELOPED WATER TRANSFERS TO THE  
9 OWNER OR OPERATOR OF THE TREATMENT FACILITY.

10 (b) AFTER TREATING DEVELOPED WATER, THE OWNER OR  
11 OPERATOR OF A TREATMENT FACILITY MAY SELL, TRANSFER, OR  
12 OTHERWISE CONVEY THE TREATED WATER TO ANOTHER PERSON FOR  
13 BENEFICIAL USE, WHICH SALE, TRANSFER, OR CONVEYANCE TRANSFERS  
14 OWNERSHIP OF, AND LIABILITY FOR, THE TREATED WATER TO THE OTHER  
15 PERSON.

16 (4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE  
17 REQUIRES:

18 (a) "CONSTITUENT ELEMENTS" MEANS SALTS, METALS, ELEMENTS,  
19 OR OTHER MINERALIZED SUBSTANCES THAT ARE NATURALLY OCCURRING  
20 AND THAT:

21 (I) ARE DISSOLVED, ENTRAINED, OR SUSPENDED IN DEVELOPED  
22 WATER IN SITU; AND

23 (II) AFTER EXTRACTION FROM THE GROUND, ARE SUSPENDED IN  
24 THE DEVELOPED WATER.

25 (b) (I) "DEVELOPED WATER" MEANS NONTRIBUTARY,  
26 SUBTERRANEAN WATER IN THE STATE THAT HAS BEEN EXTRACTED FROM  
27 THE GROUND AS AN INCIDENTAL BYPRODUCT OF OIL AND GAS DRILLING OR

1 PRODUCTION OR MINING OPERATIONS, INCLUDING FLOWBACK WATER,  
2 FORMATION WATER, INJECTION WATER, AND ANY CHEMICALS ADDED  
3 DOWNHOLE THAT ARE ASSOCIATED WITH OIL AND GAS DRILLING OR  
4 PRODUCTION OR MINING OPERATIONS.

5 (II) "DEVELOPED WATER" INCLUDES CONSTITUENT ELEMENTS  
6 WITHIN THE WATER.

7 (c) (I) "DEVELOPER" MEANS AN OIL AND GAS OPERATOR OR MINING  
8 OPERATOR THAT DEVELOPS WATER THROUGH THE EXTRACTION OF OIL AND  
9 GAS OR MINERALS.

10 (II) "DEVELOPER" INCLUDES THE DEVELOPER'S SUCCESSORS,  
11 LESSEES, CONTRACTEES, OR ASSIGNS.

12 (d) "TREATED" OR "TREATING" MEANS A MECHANICAL, CHEMICAL,  
13 THERMAL, OR OTHER COMMERCIALY VIABLE TECHNOLOGICAL PROCESS  
14 FOR RECONDITIONING DEVELOPED WATER INTO A REUSABLE FORM FOR  
15 BENEFICIAL USE.

16 (e) "TREATMENT FACILITY" MEANS A PERMITTED FACILITY AT  
17 WHICH DEVELOPED WATER IS TREATED.

18 **SECTION 2.** In Colorado Revised Statutes, **add** 39-22-549 as  
19 follows:

20 **39-22-549. Tax credit for sale and delivery of developed water**  
21 **that has been treated for beneficial use - legislative declaration -**  
22 **reports - definitions - repeal.** (1) (a) THE GENERAL ASSEMBLY FINDS  
23 AND DECLARES THAT:

24 (I) DEVELOPED WATER HAS MINIMAL INTRINSIC VALUE UNLESS IT  
25 IS TREATED FOR BENEFICIAL USE;

26 (II) TREATING DEVELOPED WATER FOR BENEFICIAL USE CAN HELP  
27 ADDRESS THE STATE'S WATER SUPPLY DEFICIT;

1 (III) TREATING DEVELOPED WATER FOR BENEFICIAL USE REQUIRES  
2 SUBSTANTIAL EXPENSE THROUGH THE CONSTRUCTION AND OPERATION OF  
3 TREATMENT FACILITIES TO PROCESS AND TREAT THE DEVELOPED WATER;

4 (IV) IT IS IN THE PUBLIC INTEREST TO PROMOTE THE TREATMENT  
5 OF DEVELOPED WATER, INCLUDING THE COMMERCIAL EXTRACTION OF  
6 CONSTITUENT ELEMENTS, BY PROVIDING A TAX CREDIT FOR THE SALE AND  
7 DELIVERY OF TREATED WATER; AND

8 (V) THE PURPOSE OF THE TAX CREDIT IN SUBSECTION (2) OF THIS  
9 SECTION IS TO PROVIDE AN INCENTIVE FOR TREATING DEVELOPED WATER  
10 FOR BENEFICIAL USE.

11 (b) IN ACCORDANCE WITH SECTION 39-21-304 (1), WHICH  
12 REQUIRES EACH BILL THAT CREATES A NEW TAX EXPENDITURE TO INCLUDE  
13 A TAX PREFERENCE PERFORMANCE STATEMENT AS PART OF A STATUTORY  
14 LEGISLATIVE DECLARATION, THE GENERAL ASSEMBLY FURTHER FINDS AND  
15 DECLARES THAT:

16 (I) THE GENERAL LEGISLATIVE PURPOSE OF THE TAX CREDIT  
17 ALLOWED BY SUBSECTION (2) OF THIS SECTION IS TO INDUCE CERTAIN  
18 DESIGNATED BEHAVIORS BY TAXPAYERS, SPECIFICALLY TREATING  
19 DEVELOPED WATER FOR BENEFICIAL USE; AND

20 (II) IN ORDER TO ALLOW THE GENERAL ASSEMBLY AND THE STATE  
21 AUDITOR TO MEASURE THE EFFECTIVENESS OF THE CREDIT, THE  
22 DEPARTMENT OF REVENUE SHALL SUBMIT TO THE GENERAL ASSEMBLY  
23 AND THE STATE AUDITOR AN ANNUAL REPORT IN ACCORDANCE WITH  
24 SUBSECTION (4) OF THIS SECTION DETAILING THE SALE AND DELIVERY OF  
25 TREATED WATER, AS REPORTED BY TAXPAYERS CLAIMING THE CREDIT  
26 AUTHORIZED UNDER SUBSECTION (2) OF THIS SECTION.

27 (2) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER

1 JANUARY 1, 2024, BUT BEFORE JANUARY 1, 2055, A TAXPAYER THAT IS AN  
2 OWNER OR OPERATOR OF A TREATMENT FACILITY IS ALLOWED A CREDIT  
3 AGAINST THE TAX IMPOSED PURSUANT TO THIS ARTICLE 22 IN AN AMOUNT  
4 EQUAL TO ONE DOLLAR PER BARREL OF TREATED WATER SOLD AND  
5 DELIVERED IN THE TAX YEAR TO ANOTHER PERSON IN THE STATE FOR  
6 BENEFICIAL USE.

7 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
8 1, 2025, BUT BEFORE JANUARY 1, 2055, THE CREDIT ALLOWED PURSUANT  
9 TO SUBSECTION (2)(a) OF THIS SECTION SHALL BE ADJUSTED IN  
10 ACCORDANCE WITH THE ANNUAL PERCENTAGE CHANGE IN THE UNITED  
11 STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS  
12 CONSUMER PRICE INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL  
13 ITEMS PAID BY ALL URBAN CONSUMERS, OR ITS SUCCESSOR INDEX.

14 (3) IF THE AMOUNT OF A CREDIT UNDER SUBSECTION (2) OF THIS  
15 SECTION EXCEEDS A TAXPAYER'S ACTUAL TAX LIABILITY FOR AN INCOME  
16 TAX YEAR, THE AMOUNT OF THE CREDIT NOT USED TO OFFSET INCOME TAX  
17 LIABILITY FOR THE INCOME TAX YEAR IS NOT REFUNDED TO THE  
18 TAXPAYER. THE TAXPAYER MAY CARRY FORWARD AND APPLY THE  
19 UNUSED CREDIT AGAINST THE INCOME TAX DUE IN EACH OF THE FIVE  
20 SUCCEEDING INCOME TAX YEARS, BUT THE TAXPAYER SHALL APPLY THE  
21 CREDIT AGAINST THE INCOME TAX DUE FOR THE EARLIEST OF THE INCOME  
22 TAX YEARS POSSIBLE. ANY AMOUNT OF THE TAX CREDIT THAT IS NOT USED  
23 AFTER THIS PERIOD IS NOT REFUNDABLE.

24 (4) FOR THE PURPOSE OF PROVIDING DATA THAT ALLOWS THE  
25 GENERAL ASSEMBLY AND THE STATE AUDITOR TO MEASURE THE  
26 EFFECTIVENESS OF THE TAX CREDIT CREATED IN SUBSECTION (2) OF THIS  
27 SECTION PURSUANT TO SECTION 39-21-304 (3), AND NOTWITHSTANDING

1 SECTION 24-1-136 (11)(a)(I), THE DEPARTMENT OF REVENUE, ON OR  
2 BEFORE JANUARY 1, 2025, AND ON OR BEFORE JANUARY 1 OF EACH YEAR  
3 THEREAFTER, SHALL SUBMIT TO THE GENERAL ASSEMBLY AND THE STATE  
4 AUDITOR A REPORT DETAILING THE SALES AND DELIVERY OF TREATED  
5 WATER BY OWNERS AND OPERATORS OF TREATMENT FACILITIES, AS  
6 REPORTED BY TAXPAYERS CLAIMING THE CREDIT AUTHORIZED UNDER  
7 SUBSECTION (2) OF THIS SECTION. THE TAX CREDIT ESTABLISHED IN THIS  
8 SECTION WILL MEET ITS PURPOSE IF SALES AND DELIVERY OF TREATED  
9 WATER BY OWNERS AND OPERATORS OF TREATMENT FACILITIES INCREASE  
10 SIGNIFICANTLY WITHIN TEN YEARS AFTER THE TAX CREDIT BECOMES  
11 EFFECTIVE.

12 (5) IF A TAXPAYER THAT IS AN OWNER OR OPERATOR OF A  
13 TREATMENT FACILITY RECEIVING A TAX CREDIT IS A PARTNERSHIP,  
14 LIMITED LIABILITY COMPANY, CORPORATION, OR SIMILAR PASS-THROUGH  
15 ENTITY, THE OWNER OR OPERATOR MAY ALLOCATE THE CREDIT AMONG ITS  
16 PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER QUALIFIED TAXPAYERS  
17 IN ANY MANNER AGREED TO BY SUCH PERSONS REGARDLESS OF WHETHER  
18 ANY SUCH PERSONS ARE DEEMED A PARTNER FOR FEDERAL INCOME TAX  
19 PURPOSES. THE OWNER OR OPERATOR SHALL CERTIFY TO THE  
20 DEPARTMENT OF REVENUE THE AMOUNT OF THE CREDIT ALLOCATED TO  
21 EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER QUALIFIED TAXPAYER.  
22 EACH PARTNER, SHAREHOLDER, MEMBER, OR OTHER QUALIFIED TAXPAYER  
23 ADMITTED AS A PARTNER, SHAREHOLDER, MEMBER, OR OTHER QUALIFIED  
24 TAXPAYER OF THE OWNER OR OPERATOR, BEFORE THE FILING OF A TAX  
25 FORM CLAIMING THE CREDIT, MAY CLAIM SUCH AMOUNT SUBJECT TO ANY  
26 RESTRICTIONS SET FORTH IN THIS SECTION.

27 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE

1 REQUIRES:

2 (a) "BARREL" MEANS FORTY-TWO GALLONS.

3 (b) "CONSTITUENT ELEMENTS" HAS THE MEANING SET FORTH IN  
4 SECTION 37-82-107 (4)(a).

5 (c) "DEVELOPED WATER" HAS THE MEANING SET FORTH IN SECTION  
6 37-82-107 (4)(b).

7 (d) "TAXPAYER" HAS THE MEANING SET FORTH IN SECTION  
8 39-21-101 (4).

9 (e) "TREATED" OR "TREATING" HAS THE MEANING SET FORTH IN  
10 SECTION 37-82-107 (4)(d).

11 (f) "TREATMENT FACILITY" HAS THE MEANING SET FORTH IN  
12 SECTION 37-82-107 (4)(e).

13 (7) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2060.

14 **SECTION 3.** In Colorado Revised Statutes, 25-8-302, **add** (2) as  
15 follows:

16 **25-8-302. Duties of division.** (2) THE DIVISION IS ENCOURAGED  
17 TO COORDINATE WITH THE OIL AND GAS CONSERVATION COMMISSION  
18 CREATED IN SECTION 34-60-104.3 (1) AND THE STATE ENGINEER  
19 APPOINTED PURSUANT TO SECTION 37-80-101 TO EXPEDITE THE  
20 PERMITTING OF TREATMENT FACILITIES THAT TREAT DEVELOPED WATER  
21 PURSUANT TO SECTION 37-82-107.

22 **SECTION 4.** In Colorado Revised Statutes, 34-60-106, **add**  
23 (20.5) as follows:

24 **34-60-106. Additional powers of commission - rules -**  
25 **definitions - repeal.** (20.5) THE COMMISSION IS ENCOURAGED TO  
26 COORDINATE WITH THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT  
27 OF PUBLIC HEALTH AND ENVIRONMENT, AS DESCRIBED IN SECTION



1 25-1-102 (2)(a), AND THE STATE ENGINEER APPOINTED PURSUANT TO  
2 SECTION 37-80-101 TO EXPEDITE THE PERMITTING OF TREATMENT  
3 FACILITIES THAT TREAT DEVELOPED WATER PURSUANT TO SECTION  
4 37-82-107.

5 **SECTION 5.** In Colorado Revised Statutes, 37-80-102, **add** (11)  
6 as follows:

7 **37-80-102. General duties of state engineer - supervision and**  
8 **utilization of employees - satellite and telemetry-based monitoring**  
9 **systems.** (11) THE STATE ENGINEER IS ENCOURAGED TO COORDINATE  
10 WITH THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF PUBLIC  
11 HEALTH AND ENVIRONMENT, AS DESCRIBED IN SECTION 25-1-102 (2)(a),  
12 AND THE OIL AND GAS CONSERVATION COMMISSION CREATED IN SECTION  
13 34-60-104.3 (1) TO EXPEDITE THE PERMITTING OF TREATMENT FACILITIES  
14 THAT TREAT DEVELOPED WATER PURSUANT TO SECTION 37-82-107.

15 **SECTION 6. Act subject to petition - effective date.** This act  
16 takes effect at 12:01 a.m. on the day following the expiration of the  
17 ninety-day period after final adjournment of the general assembly; except  
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
19 of the state constitution against this act or an item, section, or part of this  
20 act within such period, then the act, item, section, or part will not take  
21 effect unless approved by the people at the general election to be held in  
22 November 2024 and, in such case, will take effect on the date of the  
23 official declaration of the vote thereon by the governor.