

CHAPTER 34

WATER AND IRRIGATION

HOUSE BILL 96-1252

BY REPRESENTATIVES George, Swenson, Taylor, and Young;
also SENATORS Wattenberg and Ament.

AN ACT

CONCERNING A PROVISION THAT ESTABLISHES THAT AUGMENTATION WATER LIMITED IN DURATION DOES NOT PRECLUDE APPROVAL OF PLANS FOR AUGMENTATION SO LONG AS THERE IS REPLACEMENT OF OUT-OF-PRIORITY DEPLETIONS THAT OCCUR AFTER ANY GROUNDWATER DIVERSIONS CEASE.

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

SECTION 1. 37-92-103 (9), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

37-92-103. Definitions. As used in this article, unless the context otherwise requires:

(9) "Plan for augmentation" means a detailed program, WHICH MAY BE EITHER TEMPORARY OR PERPETUAL IN DURATION, to increase the supply of water available for beneficial use in a division or portion thereof by the development of new or alternate means or points of diversion, by a pooling of water resources, by water exchange projects, by providing substitute supplies of water, by the development of new sources of water, or by any other appropriate means. "Plan for augmentation" does not include the salvage of tributary waters by the eradication of phreatophytes, nor does it include the use of tributary water collected from land surfaces ~~which~~ THAT have been made impermeable, thereby increasing the runoff but not adding to the existing supply of tributary water.

SECTION 2. 37-92-305 (8), Colorado Revised Statutes, 1990 Repl. Vol., is amended to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (8) In reviewing a proposed plan for augmentation and in considering terms and conditions ~~which~~ THAT may be necessary to avoid injury, the referee or the water judge shall consider the depletions from an applicant's use or proposed use of water, in quantity and in time, the amount and timing of augmentation water ~~which~~ THAT would be provided by the applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right. A plan for augmentation shall be sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his OR HER lawful entitlement by the applicant's diversion. A PROPOSED PLAN FOR AUGMENTATION THAT RELIES UPON A SUPPLY OF AUGMENTATION WATER WHICH, BY CONTRACT OR OTHERWISE, IS LIMITED IN DURATION SHALL NOT BE DENIED SOLELY UPON THE GROUND THAT THE SUPPLY OF AUGMENTATION WATER IS LIMITED IN DURATION, SO LONG AS THE TERMS AND CONDITIONS OF THE PLAN PREVENT INJURY TO VESTED WATER RIGHTS. SAID TERMS AND CONDITIONS SHALL REQUIRE REPLACEMENT OF OUT-OF-PRIORITY DEPLETIONS THAT OCCUR AFTER ANY GROUNDWATER DIVERSIONS CEASE. Decrees approving plans for augmentation shall require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 25, 1996