

Reducing barriers to replacing lawns with low-water plants in HOAs

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What is this bill?

1. This bill is designed to reduce barriers and provide more clarity to homeowners who want to replace their lawn with low-water plants.
2. Reminder: xeriscaping is the art and science of low-water landscaping.
3. Xeriscaping is NOT synonymous with “zero-scaping,” which normally involves hardscapes or artificial turf.
4. The term “xeriscaping” was originated by Denver Water in the 1980s. We’d like for Colorado to retain its cutting edge in water law and in water savings.

Current Law (clipped for clarity)

38-33.3-106.5 - ... An HOA shall not prohibit the use of xeriscape or drought-tolerant vegetative landscapes but an HOA may adopt aesthetic guidelines that can regulate the type, number, and placement of plants and hardscapes.

What is lacking in current law

1. Existing laws do not limit HOAs' ability to reject, over-modify, or slow-walk xeriscaping plans based on concerns that are vague or subjective.
2. Aesthetics clause arguably supersedes the first clause.
3. Existing laws do not provide clear guidance about which landscaping plans are protected by law.
4. Existing laws could use an enforcement mechanism.

Perception is reality when it deters people from trying

In practice, this has meant that homeowners continue to list potential HOA opposition as a main reason for not installing water-wise vegetative landscapes. (Source: Greeley survey provided by Western Resource Advocates)

This survey asked what were primary reasons people did not install low-water landscaping. Although the survey did not provide an option for “HOA” as a response, they were mentioned in 41 out of 94 write-in responses.

It appears that the law’s vagueness does not provide a clear enough mechanism for homeowners to confidently propose xeriscaping plans, or to defend themselves if HOAs reject xeriscaping plans without reasonable basis.

Existing law does not adequately empower homeowners to protect their freedom to install quality xeriscape

1. Current law has no explicit provisions for when an HOA illegally forces homeowners to have high-water landscaping.
2. This is likely why we have not been able to locate any instances of anyone using the current law to defend their right to install quality low-water landscaping.
3. However, the current bill provides an explicit mechanism by which homeowners can defend themselves against unreasonable prohibitions on quality water-saving landscaping.
4. We anticipate that the higher level of clarity provided by this legislation will obviate the need for wasteful litigation (i.e., litigation beyond that necessary to defend homeowner freedom to install aesthetic sustainable landscaping).

Xeriscape vs. hardscape

1. Current law is also troublesome in that HOAs can force homeowners into a choice between high-water landscapes and undesirable low-water landscapes.
2. Some HOAs have said that homeowners can install xeriscape only if it is mostly hardscape.
3. Hardscape has undesirable properties regarding ground temperatures and water runoff.
4. Homeowners will often choose high-water landscapes if hardscape is the only xeriscape alternative.
5. The bill addresses this problem.

Balance

1. This bill only promotes xeriscaping plans from professional organizations and landscapers.
2. HOAs retain most of their aesthetic powers.
3. However, HOAs must pre-approve at least two professional designs of vegetative xeriscaping, and give homeowners a path forward they can be confident in without the fear of confrontation or arbitrary denial.

Outdoor water use and potential for savings

1. Potential for water savings
 - a. Roughly 10% of Colorado's water goes to landscaping
 - b. Agriculture: ~80%, urban use 20%, roughly 50/50 indoor/outdoor
 - i. A landscaping plan of $\frac{1}{3}$ traditional high-water, $\frac{1}{3}$ medium-water, and $\frac{1}{3}$ xeriscaping typically saves fully HALF the water over turf grass.

Other benefits of low-water plants

- a. Plants and soil naturally clean stormwater run-off before returning it to the water system (river or groundwater)
 - i. For the water supplier, less water produced means less chemicals and energy cost
 - ii. Using native plants reduces need for pesticides and fertilizer (again improve stormwater quality)
- b. Unshaded rock cause heat islands which are similar to installing concrete
- c. Rock still takes maintenance and can become weed-infested
- d. Well-landscaped yards add 10% to the property values
- e. Aesthetic /intrinsic value of a well landscaped yard; community pride; beauty
- f. Plants provide habitat and food for wildlife and pollinators
- g. Native plants can provide drought tolerance and/or resistance

HOAs

1. The Community Associations Institute (CAI) estimates there are between 345,000 and 347,000 in the US.
2. There's an estimated 9,000 Common Interest Communities (CICs), or HOAs, in Colorado.
3. An estimated 2.3 million people in Colorado (population 5.7 million) live in an HOA. (40% of pop.) Some 61% of CO homeowners live in an HOA.

Before and after (Cherry Creek 3 HOA, Denver)

2009 – 36.7 million gallons of water per year

2020 – 20.4 million gallons of water per year



Shortage

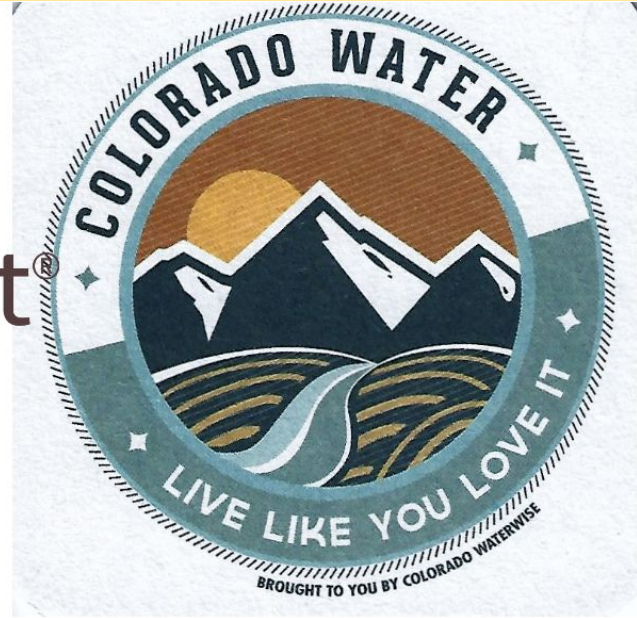
“The state faces a 163 billion gallon projected water shortfall by 2050 that, as today’s population of 5.3 million grows to 10 million and industry expands, threatens to leave 2.5 million people parched.” — Colorado Water Plan (2015)



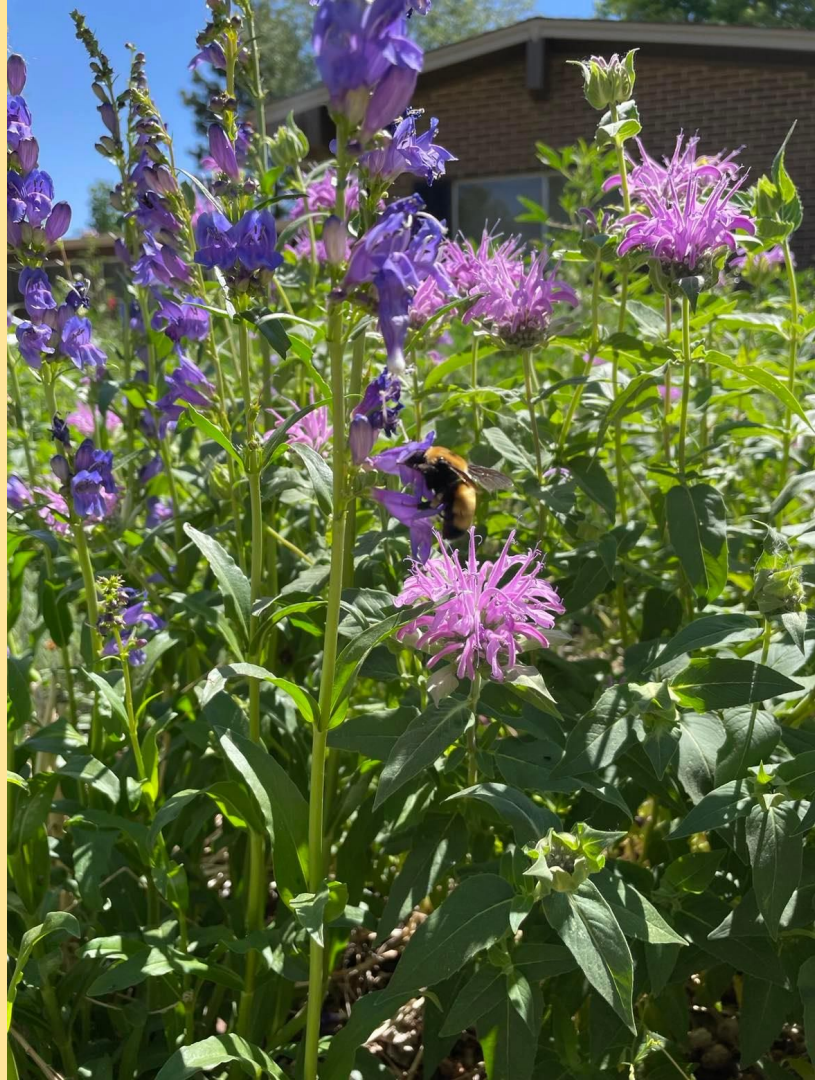
Save water for nature... for our residents...for those who follow ...and do it because “It’s the right thing for everyone!”



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Questions?

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