

PLEASE VOTE AGAINST SB10-052

Summary of SB10-052: This bill revokes the right of a surface water right owner to request a contraction of the boundaries of a designated groundwater basin based upon future conditions and new data proving wells deplete streams and injure surface water rights. The bill may result in exempting junior designated wells which deplete streams from administration and curtailment by senior surface rights.

I. SB-052 could violate the constitutionally protected right of a senior water appropriator to curtail junior uses.

The Colorado Constitution guarantees that the “priority of appropriation shall give the better right” as between those using the water for the same purposes from waters of any natural stream, both surface water and groundwater tributary to surface water. Colo. Const. art. XVI, Sec. 6. *Gallegos v. Colorado Groundwater Commission*, 147 P.3d 20 (2006). This rule of priority of appropriation cannot be changed by legislative enactment. *High Line Canal and Reservoir Company v. Southworth*, 13 Colo. 111, 21 P. 1028 (1889). SB-052 would violate this constitutional guarantee of prior appropriation if it prevented a senior surface water right owner from curtailing junior well diversions that deplete a stream out-of-priority. SB-052 is unconstitutional and is otherwise bad precedent for the protection of senior water rights.

II. SB-052 could be an unconstitutional taking of vested water rights without compensation.

SB-052 unjustly shifts the burden of groundwater depletions to senior surface water users who have not caused the depletions. The Colorado Constitution protects the government from taking or damaging private property for public or private use without just compensation. Colo. Const. art. II, Sections 14 & 15. An individual property owner should not bear burdens for the public good that should more properly be borne by the public at large. SB-052 may strip away the right of a surface water owner to call for the water to which the owner is entitled under vested water rights.

III. SB-052 reneges on the prior statutory guarantee that the basin’s boundaries would be redrawn upon future evidence of depletions to senior surface water users. Consequently, SB-052 would be an unlawful retrospective law.

Retrospective legislation is constitutionally prohibited. Colo. Const., art. II, Sec. 11. A statute is retrospective if it takes away or impairs vested rights acquired under existing laws or attaches a new disability in respect to transactions already past; this presumption is intended to prevent the unfairness that would otherwise result from changing the consequences of an act after that act has occurred. *City of Colorado Springs v. Powell*, 156 P.3d 461 (Colo. 2007). At the time groundwater basins were designated, a condition of such designation was that their boundaries could be redrawn upon a future change in conditions or data