

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend**  
3 (3) (b), (4) (b), and (4) (c); and **add** (4) (d), (7.3), and (7.5) as follows:

4 **37-92-103. Definitions.** As used in this article, unless the context  
5 otherwise requires:

6 (3) (b) Nothing in this subsection (3) shall affect AFFECTS  
7 appropriations by the state of Colorado for minimum streamflows as  
8 described in subsection (4) of this section OR APPROVAL OF FLEX USE.

9 (4) "Beneficial use" means the use of that amount of water that is  
10 reasonable and appropriate under reasonably efficient practices to  
11 accomplish without waste the purpose for which the appropriation is  
12 lawfully made. Without limiting the generality of the previous sentence,  
13 "beneficial use" includes:

14 (b) The diversion of water by a county, municipality, city and  
15 county, water district, water and sanitation district, water conservation  
16 district, or water conservancy district for recreational in-channel diversion  
17 purposes; and

18 (c) For the benefit and enjoyment of present and future  
19 generations, the appropriation by the state of Colorado in the manner  
20 prescribed by law of such minimum flows between specific points or  
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1 levels for and on natural streams and lakes as are required to preserve the  
2 natural environment to a reasonable degree; AND

3 (d) A FLEX USE.

4 (7.3) "FLEX CONSUMPTIVE USE" MEANS THE FULLY CONSUMPTIVE  
5 PORTION OF A WATER RIGHT THAT HAS BEEN QUANTIFIED BY EITHER A  
6 WATER COURT CHANGE-IN-USE DECREE OR A SUBSTITUTE WATER SUPPLY  
7 PLAN APPROVAL, ENTERED OR APPROVED ON OR AFTER JUNE 1, 2014, AND  
8 THE RETURN FLOWS ASSOCIATED WITH THE HISTORICAL USE OF THE WATER  
9 RIGHT IF APPROPRIATED IN ACCORDANCE WITH THE LAW UNDER A NEW  
10 PRIORITY DATE AND CONFIRMED BY THE WATER COURT CHANGE-IN-USE  
11 DECREE IN WHICH THE FULLY CONSUMPTIVE USE PORTION OF THE WATER  
12 RIGHT IS QUANTIFIED, THAT:

13 (a) IDENTIFIES THE WATER RIGHT AS A FLEX USE WATER RIGHT;

14 (b) QUANTIFIES THE HISTORICAL DIVERSIONS AND HISTORICAL  
15 CONSUMPTIVE USE OF THE WATER RIGHT;

16 (c) QUANTIFIES THE RETURN FLOWS ASSOCIATED WITH THE  
17 HISTORICAL USE OF THE WATER RIGHT IN TIME, PLACE, AND AMOUNT;

18 (d) PROVIDES TERMS AND CONDITIONS FOR A CHANGE IN TYPE OF  
19 USE OF THE WATER RIGHT THAT PREVENT MATERIAL INJURY TO OTHER  
20 VESTED WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS,  
21 INCLUDING THE RETURN FLOW OBLIGATIONS IN TIME, PLACE, AND  
22 AMOUNT;

23 (e) IF RETURN FLOWS ASSOCIATED WITH THE HISTORICAL USE OF  
24 THE WATER RIGHT ARE APPROPRIATED IN ACCORDANCE WITH THE LAW  
25 UNDER A NEW PRIORITY DATE, PROVIDES TERMS AND CONDITIONS  
26 GOVERNING THE USE OF THE APPROPRIATED RETURN FLOWS;  
27 (f) PERMITS DELIVERY AND USE OF ALL OR A PORTION OF THE

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CONSUMPTIVE USE ASSOCIATED WITH THE WATER RIGHT AND ANY  
2 APPROPRIATED RETURN FLOWS TO A FLEX USE THROUGH THE  
3 IMPLEMENTATION OF FALLOWING, REGULATED DEFICIT IRRIGATION,  
4 REDUCED CONSUMPTIVE USE CROPPING, OR OTHER ALTERNATIVE TO  
5 PERMANENT CESSATION OF AGRICULTURAL IRRIGATION ON THE PROPERTY  
6 THAT IS SERVED BY THE WATER RIGHT; AND

7 (g) ESTABLISHES A FIXED POINT OR POINTS OF DELIVERY FOR THE  
8 FULLY CONSUMPTIVE PORTION OF THE WATER RIGHT AND ANY  
9 APPROPRIATED RETURN FLOWS.

10 (7.5) (a) "FLEX USE" MEANS AN APPLICATION OF FLEX  
11 CONSUMPTIVE USE TO ANY BENEFICIAL USE, INCLUDING A COMPACT  
12 OBLIGATION, WITHIN THE WATER DIVISION OF HISTORICAL USE. "FLEX USE" DOES NOT  
INCLUDE THE APPLICATION OF FLEX CONSUMPTIVE USE TO FACILITATE THE DIVERSION OF  
WATER BETWEEN WATER DIVISIONS BY DIRECT DIVERSION, EXCHANGE, REPLACEMENT,  
OR OTHER MEANS.

13 (b) FOLLOWING DELIVERY OF FLEX CONSUMPTIVE USE AT THE  
14 POINT OR POINTS OF DELIVERY IDENTIFIED IN THE APPLICABLE  
15 CHANGE-IN-USE DECREE OR SUBSTITUTE WATER SUPPLY PLAN APPROVAL,  
16 THE WATER USER MAY ACCOMPLISH FLEX USE BY DIRECT DELIVERY;  
17 STORAGE; RECHARGE; EXCHANGE; WATER BANKING; WHERE APPROPRIATE,  
18 NONCONSUMPTIVE USE; OR ANY OTHER LAWFUL MEANS THAT COMPLY  
19 WITH APPLICABLE DECREES, STATUTORY AND OTHER LEGAL  
20 REQUIREMENTS, AND ADMINISTRATION BY THE STATE ENGINEER AND  
21 DIVISION ENGINEERS.

22 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.7)  
23 as follows:

24 **37-92-305. Standards with respect to rulings of the referee and**  
25 **decisions of the water judge. (3.7) Flex use. (a)** IF A CHANGE-IN-USE  
26 APPLICATION SEEKS APPROVAL OF FLEX USE, THE TERMS AND CONDITIONS  
27 OF THE DECREE MUST COMPLY WITH SECTION 37-92-103 (7.3) AND (7.5).

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THE TERMS AND CONDITIONS 1 OF THE DECREE MUST ALSO REQUIRE THAT  
2 THE APPLICANT REPLACE HISTORICAL RETURN FLOWS IN TIME, PLACE, AND  
3 AMOUNT TO PREVENT MATERIAL INJURY TO THE OWNERS OF VESTED  
4 WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS.

5 (b) A DECREED FLEX USE IS SUBJECT TO RECONSIDERATION BY THE  
6 WATER JUDGE ON THE QUESTION OF INJURY TO THE VESTED WATER RIGHTS

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7 OF OTHERS FOR SUCH PERIOD AFTER THE ENTRY OF SUCH DECREE AS IS  
8 NECESSARY OR DESIRABLE TO REMEDY OR PRECLUDE SUCH INJURY. IT IS  
9 THE GENERAL ASSEMBLY'S INTENT THAT ANY DECREED FLEX USE BE  
10 IMPLEMENTED IN A MANNER DESIGNED TO PROMOTE THE USE OF  
11 ALTERNATIVE TRANSFER METHODS THAT ENCOURAGE AND SUPPORT  
12 CONTINUATION OF IRRIGATED AGRICULTURE, WHILE APPLYING THE  
13 DECREED FLEX USE TO ADDITIONAL USES. AS SUCH, A DECREED FLEX USE  
14 MUST BE CONDITIONED UPON THE CONTINUATION OF IRRIGATION OF A  
15 PORTION OF THE PROPERTY SERVED BY THE WATER RIGHT DECREED FOR  
16 FLEX USE, SUBJECT TO FOLLOWING FOR FLEXUSE. THE WATER JUDGE MAY  
17 ESTABLISH TERMS AND CONDITIONS COMMENSURATE WITH THE INTENT OF  
18 THE GENERAL ASSEMBLY EXPRESSED HEREIN. AT A MINIMUM, A  
19 CHANGE-IN-USE DECREE APPROVING A FLEX USE MUST PROVIDE THAT DELIVERY OF MORE  
THAN FIFTY PERCENT OF THE FLEX CONSUMPTIVE USE OVER ANY TEN YEAR PERIOD FOR USES OTHER  
THAN IRRIGATION OF THE PROPERTY SERVED BY THE THE  
~~20 DISCONTINUANCE OF IRRIGATION OF THE ENTIRE PROPERTY SERVED BY THE~~  
21 WATER RIGHT OR ANOTHER PROPERTY SERVED BY THE SAME DITCH SYSTEM DECREED  
FOR FLEX USE FOR ANY SINGLE PERIOD IN EXCESS  
~~22 OF THREE CONSECUTIVE YEARS~~ NULLIFIES THE DECREED FLEX USE  
23 WITHOUT ANY FURTHER ACTION OF THE WATER JUDGE. IN SUCH EVENT,  
24 THE WATER RIGHT MAY ONLY BE USED FOR THE DECREED IRRIGATION USE  
25 UNLESS THE OWNER OF THE WATER RIGHT OBTAINS A SUBSEQUENT WATER  
26 COURT CHANGE-IN-USE IDENTIFYING THE SPECIFIED END USES OF THE  
27 WATER RIGHT AND ESTABLISHING ANY ADDITIONAL TERMS AND  
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1 CONDITIONS NECESSARY TO PREVENT INJURY.

2 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, **add** (12)

3 as follows:

4 **37-92-308. Substitute water supply plans - special procedures**

5 **for review - water adjudication cash fund - legislative declaration -**

6 **repeal.** (12) **Flex use.** IF THE STATE ENGINEER APPROVES A SUBSTITUTE  
7 WATER SUPPLY PLAN APPLICATION IN WHICH THE PLAN SOUGHT IS FOR A  
8 FLEX USE, THE TERMS AND CONDITIONS OF THE APPROVAL MUST COMPLY  
9 WITH SECTION 37-92-103 (7.3) AND (7.5). THE TERMS AND CONDITIONS OF  
10 THE APPROVAL MUST ALSO REQUIRE THAT THE APPLICANT REPLACE  
11 HISTORICAL RETURN FLOWS IN TIME, PLACE, AND AMOUNT TO PREVENT  
12 MATERIAL INJURY TO THE OWNERS OF VESTED WATER RIGHTS AND  
13 DECREED CONDITIONAL WATER RIGHTS.

14 **SECTION 4. Effective date.** This act takes effect June 1, 2014.

15 **SECTION 5. Safety clause.** The general assembly hereby finds,  
16 determines, and declares that this act is necessary for the immediate  
17 preservation of the public peace, health, and safety.