

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 3, 2009
Date

Committee on Agriculture, Livestock, & Natural Resources.

After consideration on the merits, the Committee recommends the following:

HB09-1129 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 3, line 7, strike "NATIVE" and substitute
- 2 "PREEXISTING, NATURAL VEGETATION";
- 3 strike lines 12 through 16 and substitute the following:
- 4 "PATTERNS THAT ACCOUNT FOR VARIATIONS IN HYDROLOGY AND
- 5 PRECIPITATION EVENT INTENSITY, FREQUENCY, AND DURATION,
- 6 QUANTIFYING PREEXISTING, NATURAL VEGETATION CONSUMPTION,
- 7 MEASURING PRECIPITATION RETURN FLOW AMOUNTS, IDENTIFYING
- 8 SURFACE VERSUS GROUND WATER RETURN FLOW SPLITS, AND IDENTIFYING
- 9 DELAYED GROUND WATER RETURN FLOW TIMING TO RECEIVING
- 10 STREAMS;"
- 11 Page 4, line 12, strike "DIFFERENT" and substitute "A RANGE OF PROJECT
- 12 SIZES AND".
- 13 Page 5, strike lines 2 through 19 and substitute the following:
- 14 "STATE ENGINEER PURSUANT TO SECTION 37-92-308 (4) OR (5). UNTIL THE
- 15 PILOT PROJECT SPONSOR APPLIES TO THE WATER COURT FOR A PERMANENT
- 16 AUGMENTATION PLAN, THE PILOT PROJECT SHALL BE REQUIRED TO
- 17 REPLACE AN AMOUNT OF WATER EQUAL TO THE AMOUNT OF
- 18 PRECIPITATION CAPTURED AND MEASURED FROM ROOFTOPS AND
- 19 IMPERMEABLE SURFACES FOR NONPOTABLE USES.";

1 line 20, after "(II)", insert "(A)";
2 line 21, strike "UPON" and substitute "PRIOR TO".
3 Page 6, line 2, strike "NATIVE" and substitute "PREEXISTING, NATURAL
4 VEGETATION";

5 line 4, strike everything after the period;

6 strike lines 5 through 7 and substitute the following:

7 "(B) AFTER A MINIMUM OF TWO YEARS OF DATA COLLECTION AND
8 UPON APPLICATION TO THE APPROPRIATE WATER COURT FOR A PERMANENT
9 AUGMENTATION PLAN, THE PILOT PROJECT SPONSOR SHALL FILE AN
10 APPLICATION FOR APPROVAL OF A SUBSTITUTE WATER SUPPLY PLAN
11 PURSUANT TO SECTION 37-92-308 (4). FOR ANY SUBSTITUTE SUPPLY PLAN
12 APPLICATION FILED UNDER SECTION 37-92-308 (4), A PILOT PROJECT
13 SPONSOR MAY SEEK APPROVAL FROM THE STATE ENGINEER BASED ON
14 REPLACING ONLY THE NET DEPLETION CAUSED BY THE CAPTURE OF
15 PRECIPITATION. THE NET DEPLETION SHALL BE CALCULATED AS THE
16 AMOUNT OF PRECIPITATION CAPTURE MINUS THE HISTORICAL
17 CONSUMPTIVE USE FROM PREEXISTING, NATURAL VEGETATION COVER ON
18 THE IMPERMEABLE AREA AS DEMONSTRATED BY ANALYSIS OF THE DATA
19 COLLECTED BY THE SPONSOR DURING THE PILOT PROJECT. THE STATE
20 ENGINEER SHALL HAVE THE AUTHORITY TO REQUIRE THE SPONSOR TO
21 REPLACE ANY ONGOING DELAYED DEPLETIONS CAUSED BY THE PILOT
22 PROJECT.";

23 line 21, strike "The" and substitute "37-92-308 (4) (a) (IV) and (4) (b),
24 the" and, after "(a)", insert a comma;

25 strike line 25 and substitute the following:

26 "(4) (a) Beginning January 1, 2002, if an application for approval of a
27 plan for augmentation, rotational crop management contract, or change
28 of water right has been filed with a water court and the court has not
29 issued a decree, the state engineer may approve the temporary operation
30 of such plan, contract, or change of water right as a substitute water
31 supply plan if the following conditions are met:

1 (IV) The state engineer, after consideration of the comments
2 received, has determined that the operation and administration of such
3 plan will replace all out-of-priority depletions in time, location, and
4 amount and will otherwise prevent injury to other water rights and
5 decreed conditional water rights, including water quality and continuity
6 to meet the requirements of use to which the senior appropriation has
7 normally been put, pursuant to section 37-80-120 (3), and will not impair
8 compliance with any interstate compacts. NOTWITHSTANDING ANY
9 LIMITATIONS REGARDING PHREATOPHYTES OR IMPERMEABLE SURFACES
10 THAT WOULD OTHERWISE APPLY PURSUANT TO SECTION 37-92-103 (9) OR
11 37-92-501 (4) (b) (III), FOR ANY PRECIPITATION HARVESTING PILOT
12 PROJECT SELECTED PURSUANT TO SECTION 37-60-115 (6) THAT HAS FILED
13 AN APPLICATION FOR A PERMANENT AUGMENTATION PLAN IN WATER
14 COURT, THE OUT-OF-PRIORITY DEPLETIONS SHALL BE THE NET DEPLETION
15 AS DEFINED IN SECTION 37-60-115 (6) (c) (II) (B). IF NOT OTHERWISE
16 REQUIRED BY A WATER COURT-APPROVED AUGMENTATION PLAN, THE
17 STATE ENGINEER SHALL HAVE THE AUTHORITY TO REQUIRE THE PROJECT
18 SPONSOR TO REPLACE ANY ONGOING DELAYED DEPLETIONS AFTER THE
19 WATER USE PLAN ASSOCIATED WITH A PRECIPITATION HARVESTING PILOT
20 PROJECT HAS CEASED. The state engineer shall impose such terms and
21 conditions as are necessary to ensure that these standards are met. In
22 making such determinations, the state engineer shall not be required to
23 hold any formal hearings or conduct any other formal proceedings, but
24 may conduct a hearing or formal proceeding if the state engineer finds it
25 necessary to address the issues.

26 (b) A substitute water supply plan approved pursuant to this
27 subsection (4) shall not be approved for a period of more than one year;
28 except that an applicant may request the renewal of a plan by repeating
29 the application process described in this subsection (4). If an applicant
30 requests a renewal of a plan that would extend the plan past three years
31 from the initial date of approval, the applicant shall demonstrate to the
32 state engineer that the delay in obtaining a water court decree is justifiable
33 and that not being able to continue operating under a substitute water
34 supply plan until a decree is entered will cause undue hardship to the
35 applicant. A PROJECT SPONSOR FOR A PRECIPITATION HARVESTING PILOT
36 PROJECT SELECTED PURSUANT TO SECTION 37-60-115 (6) SHALL
37 DEMONSTRATE TO THE STATE ENGINEER THAT AN ADDITIONAL YEAR OF
38 OPERATION UNDER THE PLAN IS NECESSARY TO OBTAIN SUFFICIENT DATA
39 TO MEET THE COLORADO WATER CONSERVATION BOARD'S CRITERIA FOR
40 EVALUATING THE PILOT PROJECT. If an applicant requests renewal of a

1 plan that would extend the plan past five years from the initial date of
2 approval, the applicant shall demonstrate to the water judge in the
3 applicable water division that the delay in obtaining a decree has been
4 justifiable and that not being able to continue operating under a substitute
5 water supply plan until a decree is entered will cause undue hardship to
6 the applicant. Approval of a plan pursuant to subsection (5) of this
7 section shall be deemed to be approval under this subsection (4) for
8 purposes of calculating the number of years since the initial date of
9 approval.

10 (5) (a) Beginning January 1, 2002, for new water use plans
11 involving".

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