

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0614.01 Kate Meyer

SENATE BILL 09-147

SENATE SPONSORSHIP

Hodge, Brophy

HOUSE SPONSORSHIP

Priola, Gardner C.

Senate Committees
Agriculture and Natural Resources

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF SUBSTITUTE WATER SUPPLY**
102 **PLANS FOR THE REPLACEMENT OF OUT-OF-PRIORITY**
103 **DEPLETIONS CAUSED BY HISTORIC DIVERSIONS FROM WELLS**
104 **INCLUDED IN DECREED AUGMENTATION PLANS ENTERED BY THE**
105 **WATER COURT FOR WATER DIVISION 1.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Subject to existing procedures for the approval of substitute water supply plans, authorizes substitute water supply plans for the replacement of out-of-priority lagged depletions caused by pumping of wells included

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

in decreed augmentation plans prior to January 1, 2003. Repeals the authorization on, and specifies that such plans shall expire by, July 1, 2018.

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

2 **SECTION 1.** 37-92-308, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **37-92-308. Substitute water supply plans - special procedures**
5 **for review - water adjudication cash fund - legislative declaration -**

6 **repeal.** (10) (a) BEGINNING JULY 1, 2009, FOR PLANS FOR
7 AUGMENTATION THAT ARE THE SUBJECT OF A FINAL DECREE ENTERED BY
8 THE WATER COURT FOR WATER DIVISION 1, THE STATE ENGINEER MAY
9 APPROVE A SUBSTITUTE WATER SUPPLY PLAN SOLELY FOR THE
10 REPLACEMENT OF OUT-OF-PRIORITY LAGGED DEPLETIONS CAUSED BY
11 PUMPING OF WELLS IN THE DECREED AUGMENTATION PLAN PRIOR TO
12 JANUARY 1, 2003, SUBJECT TO THE TERMS AND CONDITIONS OF THE
13 DECREED AUGMENTATION PLAN, IF THE FOLLOWING CONDITIONS ARE MET:

14 (I) THE APPLICANT HAS FILED A REQUEST FOR APPROVAL OF THE
15 SUBSTITUTE WATER SUPPLY PLAN WITH THE STATE ENGINEER, WHICH
16 REQUEST SHALL INCLUDE THE FOLLOWING INFORMATION:

17 (A) A DESCRIPTION OF THE WATER RIGHTS, SUFFICIENT TO
18 IDENTIFY THE RIGHTS, TO BE USED IN THE SUBSTITUTE WATER SUPPLY
19 PLAN AND A LIST OF DECREES ASSOCIATED WITH SAID RIGHTS;

20 (B) THE AMOUNT OF WATER AVAILABLE FOR REPLACEMENT USED
21 UNDER THE SUBSTITUTE WATER SUPPLY PLAN FROM SAID WATER RIGHTS;

22 (C) THE AMOUNT OF RETURN FLOWS, IF ANY, ASSOCIATED WITH
23 THE WATER RIGHTS PROPOSED TO BE USED IN THE SUBSTITUTE WATER
24 SUPPLY PLAN;

1 (D) THE AMOUNT OF DEPLETIONS FROM DIVERSIONS PRIOR TO
2 JANUARY 1, 2003, TO BE REPLACED UNDER THE SUBSTITUTE WATER
3 SUPPLY PLAN;

4 (E) THE MANNER IN WHICH THE APPLICANT WILL ACCOUNT FOR
5 THE USE OF THE WATER RIGHTS FOR REPLACEMENT USES AND MAKE ANY
6 REQUIRED RETURN FLOW REPLACEMENTS UNDER THE SUBSTITUTE WATER
7 SUPPLY PLAN;

8 (II) THE APPLICANT HAS PROVIDED WRITTEN NOTICE OF THE
9 REQUEST FOR APPROVAL OF THE SUBSTITUTE WATER SUPPLY PLAN BY
10 FIRST-CLASS MAIL OR ELECTRONIC MAIL AND HAS MADE AVAILABLE IN
11 PAPER OR ELECTRONIC FORMAT THE INFORMATION REQUIRED IN
12 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) TO ALL PARTIES WHO HAVE
13 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST
14 FOR THE WATER DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED AND
15 PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER;

16 (III) THE STATE ENGINEER HAS GIVEN THE OWNERS OF WATER
17 RIGHTS AND DECREED CONDITIONAL WATER RIGHTS THIRTY DAYS AFTER
18 THE DATE OF MAILING OF SUCH NOTICE TO FILE COMMENTS ON THE
19 SUBSTITUTE WATER SUPPLY PLAN. SUCH COMMENTS SHALL INCLUDE ANY
20 CLAIM OF INJURY OR ANY TERMS AND CONDITIONS THAT SHOULD BE
21 IMPOSED UPON THE PLAN TO PREVENT INJURY TO A PARTY'S WATER RIGHTS
22 OR DECREED CONDITIONAL WATER RIGHTS AND ANY OTHER INFORMATION
23 THE OPPOSER WISHES THE STATE ENGINEER TO CONSIDER IN REVIEWING
24 THE SUBSTITUTE WATER SUPPLY PLAN REQUEST.

25 (IV) THE STATE ENGINEER, AFTER CONSIDERATION OF THE
26 COMMENTS RECEIVED, HAS DETERMINED THAT THE OPERATION AND
27 ADMINISTRATION OF THE SUBSTITUTE WATER SUPPLY PLAN WILL, WHEN

1 COMBINED WITH REPLACEMENTS UNDER THE DECREED AUGMENTATION
2 PLAN, REPLACE ALL OUT-OF-PRIORITY DEPLETIONS CAUSED BY THE
3 DIVERSIONS FROM WELLS PRIOR TO JANUARY 1, 2003, INCLUDED IN THE
4 DECREED AUGMENTATION PLAN IN TIME, LOCATION, AND AMOUNT AS
5 DETERMINED BY THE DECREE, AND WILL OTHERWISE PREVENT INJURY TO
6 OTHER WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS,
7 INCLUDING WATER QUALITY AND CONTINUITY TO MEET THE
8 REQUIREMENTS OF USE TO WHICH THE SENIOR APPROPRIATION HAS
9 NORMALLY BEEN PUT, PURSUANT TO SECTION 37-80-120 (3), AND WILL
10 NOT IMPAIR COMPLIANCE WITH ANY INTERSTATE COMPACTS. THE STATE
11 ENGINEER SHALL IMPOSE SUCH TERMS AND CONDITIONS AS ARE
12 NECESSARY TO ENSURE THAT THESE STANDARDS ARE MET. IN MAKING THE
13 DETERMINATIONS SPECIFIED IN THIS SUBPARAGRAPH (IV), THE STATE
14 ENGINEER SHALL NOT BE REQUIRED TO HOLD ANY FORMAL HEARINGS OR
15 CONDUCT ANY OTHER FORMAL PROCEEDINGS, BUT MAY CONDUCT A
16 HEARING OR FORMAL PROCEEDING IF THE STATE ENGINEER FINDS IT
17 NECESSARY TO ADDRESS THE ISSUES.

18 (b) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO
19 THIS SUBSECTION (10) MAY UTILIZE WATER SUPPLIES OR WATER RIGHTS
20 THAT ARE NOT LISTED IN THE DECREED AUGMENTATION PLAN FOR
21 AUGMENTATION PURPOSES, OR THAT ARE TEMPORARY, IF ALL
22 REQUIREMENTS OF THIS SUBSECTION (10) ARE MET.

23 (c) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO
24 THIS SUBSECTION (10) SHALL NOT BE APPROVED FOR A PERIOD OF MORE
25 THAN ONE YEAR; EXCEPT THAT AN APPLICANT MAY REQUEST THE
26 RENEWAL OF A PLAN BY REPEATING THE APPLICATION PROCESS DESCRIBED
27 IN THIS SUBSECTION (10).

1 (d) WHEN THE STATE ENGINEER APPROVES OR DENIES A
2 SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SUBSECTION (10),
3 THE STATE ENGINEER SHALL SERVE A COPY OF THE DECISION ON ALL
4 PARTIES TO THE APPLICATION BY FIRST-CLASS MAIL OR, IF SUCH PARTIES
5 HAVE SO ELECTED, BY ELECTRONIC MAIL. NEITHER THE APPROVAL NOR
6 THE DENIAL BY THE STATE ENGINEER SHALL CREATE ANY PRESUMPTIONS,
7 SHIFT THE BURDEN OF PROOF, OR SERVE AS A DEFENSE IN ANY LEGAL
8 ACTION THAT MAY BE INITIATED CONCERNING THE SUBSTITUTE WATER
9 SUPPLY PLAN. ANY APPEAL OF A DECISION MADE BY THE STATE ENGINEER
10 CONCERNING A SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS
11 SUBSECTION (10) SHALL BE MADE WITHIN THIRTY DAYS AFTER THE
12 DECISION IS ISSUED TO THE WATER JUDGE IN THE APPLICABLE WATER
13 DIVISION, WHO SHALL HEAR SUCH APPEAL ON AN EXPEDITED BASIS.

14 (e) NOTHING IN THIS SUBSECTION (10) SHALL AUTHORIZE OR
15 FACILITATE ADDITIONAL TRANSBASIN DIVERSION OF WATER FROM THE
16 COLORADO RIVER.

17 (f) (I) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JULY 1,
18 2018.

19 (II) ALL APPROVALS OF SUBSTITUTE WATER SUPPLY PLANS UNDER
20 THIS SUBSECTION (10) SHALL EXPIRE ON OR BEFORE JULY 1, 2018.

21 **SECTION 2. Applicability.** This act shall apply to substitute
22 water supply plans applied for on or after the effective date of this act.

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