

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

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 09-0736.01 Thomas Morris

**HOUSE BILL 09-1174**

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**HOUSE SPONSORSHIP**

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**SENATE SPONSORSHIP**

**Hodge, Brophy**

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

Agriculture and Natural Resources

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**A BILL FOR AN ACT**

101 **CONCERNING THE EXEMPTION OF DEPLETIONS FROM PUMPING THAT**  
102 **OCCURRED PRIOR TO 1974.**

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**Bill Summary**

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

Specifies that decrees for plans for augmentation entered in the South Platte river basin on or after the effective date of the act shall not require the replacement of out-of-priority depletions caused by pumping that occurred prior to March 15, 1974. Allows the water judge to review all of the terms and conditions of a proposed amended plan.

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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.*

SENATE  
2nd Reading Unam ended  
March 6, 2009

HOUSE  
3rd Reading Unam ended  
February 9, 2009

HOUSE  
2nd Reading Unam ended  
February 6, 2009

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

2 **SECTION 1.** 37-92-305 (8), Colorado Revised Statutes, is  
3 amended to read:

4 **37-92-305. Standards with respect to rulings of the referee and**  
5 **decisions of the water judge.** (8) (a) EXCEPT AS SPECIFIED IN  
6 PARAGRAPH (b) OF THIS SUBSECTION (8), in reviewing a proposed plan for  
7 augmentation and in considering terms and conditions that may be  
8 necessary to avoid injury, the referee or the water judge shall consider the  
9 depletions from an applicant's use or proposed use of water, in quantity  
10 and in time, the amount and timing of augmentation water that would be  
11 provided by the applicant, and the existence, if any, of injury to any  
12 owner of or persons entitled to use water under a vested water right or a  
13 decreed conditional water right.

14 (b) AS TO DECREES FOR PLANS FOR AUGMENTATION ENTERED IN  
15 WATER DIVISION 1 ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION  
16 (8), AS AMENDED, THE PLAN SHALL NOT REQUIRE THE REPLACEMENT OF  
17 OUT-OF-PRIORITY DEPLETIONS CURRENTLY AFFECTING THE RIVER CAUSED  
18 BY PUMPING THAT OCCURRED PRIOR TO MARCH 15, 1974. IN THE CASE OF  
19 AN AMENDED PLAN FOR AUGMENTATION APPLIED FOR PURSUANT TO THIS  
20 PARAGRAPH (b), THE WATER JUDGE MAY REVIEW ALL OF THE TERMS AND  
21 CONDITIONS OF THE PLAN.

22 (c) A plan for augmentation shall be sufficient to permit the  
23 continuation of diversions when curtailment would otherwise be required  
24 to meet a valid senior call for water, to the extent that the applicant shall  
25 provide replacement water necessary to meet the lawful requirements of  
26 a senior diverter at the time and location and to the extent the senior  
27 would be deprived of his or her lawful entitlement by the applicant's

1 diversion. A proposed plan for augmentation that relies upon a supply of  
2 augmentation water ~~which~~ THAT, by contract or otherwise, is limited in  
3 duration shall not be denied solely upon the ground that the supply of  
4 augmentation water is limited in duration, ~~so long as~~ IF the terms and  
5 conditions of the plan prevent injury to vested water rights. Said terms  
6 and conditions shall require replacement of out-of-priority depletions that  
7 occur after any ground water diversions cease. Decrees approving plans  
8 for augmentation shall require that the state engineer curtail all  
9 out-of-priority diversions, the depletions from which are not so replaced  
10 as to prevent injury to vested water rights. A plan for augmentation may  
11 provide procedures to allow additional or alternative sources of  
12 replacement water, including water leased on a yearly or less frequent  
13 basis, to be used in the plan after the initial decree is entered if the use of  
14 said additional or alternative sources is part of a substitute water supply  
15 plan approved pursuant to section 37-92-308 or if such sources are  
16 decreed for such use.

17 **SECTION 2. Act subject to petition - effective date.** This act  
18 shall take effect at 12:01 a.m. on the day following the expiration of the  
19 ninety-day period after final adjournment of the general assembly that is  
20 allowed for submitting a referendum petition pursuant to article V,  
21 section 1 (3) of the state constitution, (August 4, 2009, if adjournment  
22 sine die is on May 6, 2009); except that, if a referendum petition is filed  
23 against this act or an item, section, or part of this act within such period,  
24 then the act, item, section, or part, if approved by the people, shall take  
25 effect on the date of the official declaration of the vote thereon by  
26 proclamation of the governor.