## **Second Regular Session** Sixty-eighth General Assembly STATE OF COLORADO

## REREVISED

This Version Includes All Amendments Adopted in the Second House **HOUSE BILL 12-1022** 

LLS NO. 12-0123.01 Thomas Morris x4218

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**Senate Committees** Agriculture, Livestock, & Natural Resources Agriculture, Natural Resources, and Energy

## A BILL FOR AN ACT

101	CONCERNING THE AMOUNT OF WATER THAT PERMITTED MINING
102	OPERATIONS THAT CONSTRUCT IMPERMEABLE AREAS THAT
103	ELIMINATE PREEXISTING NATURAL EVAPOTRANSPIRATION ARE
104	REQUIRED TO REPLACE.

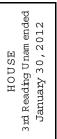
#### **Bill Summary**

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

Water Resources Review Committee. Some mining operations construct impermeable areas that capture precipitation and eliminate preexisting natural evapotranspiration. Current law requires that the portion of the captured precipitation that historically reached the stream

# 3rd Reading Unam ended February 29, 2012 SENATE

2nd Reading Unam ended February 28, 2012 SENATE





must be replaced to prevent injury to senior water rights. However, capturing the amount of water that was lost through plant transpiration or evaporation does not increase the actual stream depletions caused by the mining operation because the evapotranspiration did not historically reach the stream. Current law does not give the mine operator any credit for this reduction in evapotranspiration when calculating the obligation to replace stream depletions unless it is a sand and gravel mine. The bill specifies that for all permitted mining operations, there will be no requirement to replace the amount of historic natural depletion to the waters of the state that was caused by the preexisting natural evapotranspiration on the surface of an area that will be, or that has been, eliminated or made impermeable.

2 **SECTION 1.** In Colorado Revised Statutes, 37-80-120, add (6) 3 as follows: 4 **37-80-120.** Upstream storage - substitute supply - historic 5 natural depletion. (6) IN DETERMINING THE QUANTITY OF WATER 6 REOUIRED AS A SUBSTITUTE SUPPLY TO REPLACE STREAM DEPLETIONS IN 7 CONNECTION WITH ANY MINING OPERATION AS DEFINED IN SECTION 8 34-32-103 (8), C.R.S., FOR WHICH A RECLAMATION PERMIT HAS BEEN 9 OBTAINED AS SET FORTH IN SECTION 34-32-109, C.R.S., THERE IS NO 10 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL 11 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE 12 PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE 13 SURFACE OF THE AREA THAT WILL BE, OR THAT HAS BEEN, ELIMINATED OR 14 MADE IMPERMEABLE AS PART OF THE PERMITTED MINING OPERATION. THE 15 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL 16 DEPLETION. 17 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, add (12) 18 (c) as follows:

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

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19 **37-92-305.** Standards with respect to rulings of the referee and

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1 decisions of the water judge. (12) (c) IN DETERMINING THE QUANTITY 2 OF WATER REQUIRED IN AN AUGMENTATION PLAN TO REPLACE STREAM 3 DEPLETIONS IN CONNECTION WITH ANY MINING OPERATION AS DEFINED IN 4 SECTION 34-32-103 (8), C.R.S., FOR WHICH A RECLAMATION PERMIT HAS 5 BEEN OBTAINED AS SET FORTH IN SECTION 34-32-109, C.R.S., THERE IS NO 6 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL 7 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY THE 8 PREEXISTING NATURAL VEGETATIVE COVER AND EVAPORATION ON THE 9 SURFACE OF THE AREA THAT WILL BE, OR THAT HAS BEEN, ELIMINATED OR 10 MADE IMPERMEABLE AS PART OF THE PERMITTED MINING OPERATION. THE 11 APPLICANT BEARS THE BURDEN OF PROVING THE HISTORIC NATURAL 12 DEPLETION.

13 SECTION 3. Act subject to petition - effective date -14 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day 15 following the expiration of the ninety-day period after final adjournment 16 of the general assembly (August 7, 2012, if adjournment sine die is on 17 May 9, 2012); except that, if a referendum petition is filed pursuant to 18 section 1 (3) of article V of the state constitution against this act or an 19 item, section, or part of this act within such period, then the act, item, 20 section, or part shall not take effect unless approved by the people at the 21 general election to be held in November 2012 and shall take effect on the 22 date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to substitute supply plans
approved and augmentation plans decreed on or after the applicable
effective date of this act.

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