A BILL FOR AN ACT

CONCERNING THE USE OF SURFACE WATER TO REPLACE OUT-OF-PRIORITY GROUNDWATER DEPLETIONS WITHOUT REQUIRING ADDITIONAL WATER COURT APPROVAL PURSUANT TO A STREAMLINED APPROACH ADOPTED BY THE STATE ENGINEER AS A PILOT PROJECT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

The bill allows the use of surface water to replace or augment...
out-of-priority groundwater depletions without the necessity of filing an application for a change of water right if both the surface water and the well have been decreed or permitted for use on the same parcel of land, the use of the surface water does not result in any enlargement in the use of water, and the use complies with a rule adopted by the state engineer. **Section 1** of the bill alters the definition of a change of a water right, and **section 2** amends the augmentation and replacement statute for tributary water. **Section 3** authorizes the state engineer to adopt the rule as a pilot project and repeals the authority on September 1, 2020.

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

**SECTION 1.** In Colorado Revised Statutes, 37-92-103, amend (5) as follows:

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

(5) (a) "Change of water right" means:

(I) A change:

(A) In the type, place, or time of use; a change

(B) In the point of diversion; a change

(C) From a fixed point of diversion to alternate or supplemental points of diversion; a change

(D) From alternate or supplemental points of diversion to a fixed point of diversion; a change

(E) In the means of diversion; a change

(F) In the place of storage; a change

(G) From direct application to storage and subsequent application; a change

(H) From storage and subsequent application to direct application; a change

(I) From a fixed place of storage to alternate places of storage; a
(J) From alternate places of storage to a fixed place of storage; or
(II) Any combination of such changes specified in subparagraph (I) of this paragraph (a).

(b) The term "change of water right":
(I) Includes changes of conditional water rights as well as changes of water rights.
(II) Does not include the use of surface water to replace or augment out-of-priority groundwater depletions if, as specified by a rule adopted by the state engineer pursuant to section 37-92-501 (1) (c):
(A) Both the surface water and the well whose depletions are being replaced or augmented have been decreed or permitted for use on the same parcel of land; and
(B) The use of the surface water to replace or augment groundwater depletions does not result in any enlargement in the use of water.

SECTION 2. In Colorado Revised Statutes, 37-92-305, amend (8) (c) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (8) (c) (I) A plan for augmentation shall be sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his or her lawful entitlement by the applicant's diversion. A proposed plan for
augmentation that relies upon a supply of augmentation water that, by contract or otherwise, is limited in duration shall not be denied solely upon the ground that the supply of augmentation water is limited in duration, if the terms and conditions of the plan prevent injury to vested water rights. Said terms and conditions shall require replacement of out-of-priority depletions that occur after any groundwater diversions cease. Decrees approving plans for augmentation shall require that the state engineer curtail all out-of-priority diversions, the depletions from which are not so replaced as to prevent injury to vested water rights.

(II) A plan for augmentation may provide procedures to allow additional or alternative sources of replacement water, including water leased on a yearly or less frequent basis, to be used in the plan after the initial decree is entered if the use of said additional or alternative sources is part of a substitute water supply plan approved pursuant to section 37-92-308 or if such sources are decreed for such use; EXCEPT THAT REPLACEMENT OR AUGMENTATION OBLIGATIONS MAY BE MET BY THE USE OF SURFACE WATER IF, AS SPECIFIED BY A RULE ADOPTED BY THE STATE ENGINEER PURSUANT TO SECTION 37-92-501 (1) (c):

(A) BOTH THE SURFACE WATER AND THE WELL WHOSE DEPLETIONS ARE BEING REPLACED HAVE BEEN DECREED OR PERMITTED FOR USE ON THE SAME PARCEL OF LAND; AND

(B) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT GROUNDWATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN THE USE OF WATER.

SECTION 3. In Colorado Revised Statutes, 37-92-501, amend (1) as follows:

obligation - repeal. (1) (a) The state engineer and the division engineers shall administer, distribute, and regulate the waters of the state in accordance with the constitution of the state of Colorado, the provisions of this article and other applicable laws, and written instructions and orders of the state engineer, in conformity with such constitution and laws, and no other official, board, commission, department, or agency, except as provided in this article and article 8 of title 25, C.R.S., has jurisdiction and authority with respect to said administration, distribution, and regulation.

(b) It is the legislative intent that the operation of this section shall not be used to allow groundwater withdrawal which would deprive senior surface rights of the amount of water to which said surface rights would have been entitled in the absence of such groundwater withdrawal and that groundwater diversions shall not be curtailed nor required to replace water withdrawn, for the benefit of surface right priorities, even though such surface right priorities be senior in priority date, when, assuming the absence of groundwater withdrawal by junior priorities, water would not have been available for diversion by such surface right under the priority system. The state engineer may adopt rules and regulations to assist in, but not as a prerequisite to, the performance of the foregoing duties.

(c) (I) By July 1, 2015, the state engineer may adopt a pilot program by rule that specifies a streamlined approach, such as the lease fallowing tool developed by the Colorado Water Conservation Board in consultation with the state engineer pursuant to section 37-60-115 (8) (b) (III), for determining the use of surface water, including historical consumptive use, return
FLOWS, THE POTENTIAL FOR MATERIAL INJURY TO OTHER WATER RIGHTS,
AND CONDITIONS TO PREVENT MATERIAL INJURY, TO MEET WELL
REPLACEMENT OBLIGATIONS. THE STATE ENGINEER MUST ENSURE THAT
THE CALCULATION OF REPLACEMENT OR AUGMENTATION OBLIGATIONS
PURSUANT TO THE STREAMLINED APPROACH DOES NOT RESULT IN INJURY
TO DECREED WATER RIGHTS. THE RULE MAY APPLY IN UP TO FIVE WATER
DIVISIONS OR SUB-BASINS. THE RULE MUST SPECIFY THAT REPLACEMENT
OR AUGMENTATION OBLIGATIONS MAY BE MET BY THE USE OF SURFACE
WATER IF:

(A) BOTH THE SURFACE WATER AND THE WELL WHOSE DEPLETIONS
ARE BEING REPLACED HAVE BEEN DECREED OR PERMITTED FOR USE ON THE
SAME PARCEL OF LAND; AND

(B) THE USE OF THE SURFACE WATER TO REPLACE OR AUGMENT
GROUNDWATER DEPLETIONS DOES NOT RESULT IN ANY ENLARGEMENT IN
THE USE OF WATER.

(II) THIS PARAGRAPH (c) IS REPEALED, EFFECTIVE SEPTEMBER 1,
2020.

SECTION 4. Applicability. This act applies to conduct occurring
on or after the effective date of this act.

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