

HB1016_L.004

HOUSE COMMITTEE OF REFERENCE AMENDMENT
Committee on Agriculture, Livestock, & Natural Resources.

HB15-1016 be amended as follows:

- 1 Amend printed bill, page 2, line 3, strike "(c) (I), and (6) (c) (II) (A);"
2 and substitute "(c), and (6) (e);".
- 3 Page 2, line 4, strike "and (6) (c) (II) (C)".
- 4 Page 3, line 5, after the first "OF" insert "PRECIPITATION CONSUMED
5 THROUGH".
- 6 Page 3, line 6, strike "SUCH A FACTOR," and substitute "THE FACTORS,".
- 7 Page 3, line 7, strike "FACTOR" and substitute "FACTORS".
- 8 Page 3, lines 8 and 9, strike "A FACTOR" and substitute "FACTORS".
- 9 Page 3, lines 20 and 21, strike "Until the pilot project sponsor applies to
10 the water court for a permanent augmentation plan, the" and substitute
11 "~~Until the pilot project sponsor applies to the water court for a permanent
12 augmentation plan, The~~".
- 13 Page 3, line 23, strike "and measured" and substitute "~~and measured~~ OUT
14 OF PRIORITY".
- 15 Page 3, lines 24 through 26, strike "FOR A PILOT PROJECT FOR WHICH THE
16 APPLICATION WAS SUBMITTED ON OR AFTER JANUARY 1, 2016,".
- 17 Page 3, line 27, after "REPLACE" insert "OUT-OF-PRIORITY".
- 18 Page 4, line 3, strike "AND".
- 19 Page 4, strike lines 4 through 7 and substitute "EVAPOTRANSPIRATION FOR
20 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE
21 PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE
22 HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE
23 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO
24 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).".
- 25 Page 4, lines 21 through 23, strike "FOR A PILOT PROJECT FOR WHICH THE
26 APPLICATION WAS SUBMITTED ON OR AFTER JANUARY 1, 2016,".



1 Page 4, line 24, after "REPLACE" insert "OUT-OF-PRIORITY".

2 Page 4, line 27, strike "AND EVAPORATION ON THE".

3 Page 5, strike lines 1 through 10 and substitute "EVAPOTRANSPIRATION
4 FOR THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE
5 PILOT PROJECT. THE APPLICANT BEARS THE BURDEN OF PROVING THE
6 HISTORIC NATURAL DEPLETION; EXCEPT THAT THE APPLICANT MAY USE
7 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO
8 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

9 (B) After a minimum of two years of data collection and upon
10 application to the appropriate water court for a permanent augmentation
11 plan, the pilot project sponsor shall file an application for approval of a
12 substitute water supply plan pursuant to section 37-92-308 (4). For any
13 substitute supply plan application filed under section 37-92-308 (4), a
14 pilot project sponsor may seek approval from the state engineer based on
15 replacing only the net depletion caused by the capture of precipitation.
16 The net depletion shall be calculated as the amount of precipitation
17 captured minus the historical consumptive use from preexisting, natural
18 vegetation cover on the impermeable area as demonstrated by analysis of
19 the data collected by the sponsor during the pilot project THE SPONSOR
20 SHALL FULLY AUGMENT ANY PRECIPITATION CAPTURED OUT OF PRIORITY
21 THAT WOULD OTHERWISE HAVE ACCRUED TO A NATURAL STREAM; EXCEPT
22 THAT, IN DETERMINING THE QUANTITY OF WATER REQUIRED FOR THE
23 SUBSTITUTE WATER SUPPLY PLAN TO REPLACE OUT-OF-PRIORITY STREAM
24 DEPLETIONS, THERE IS NO REQUIREMENT TO REPLACE THE AMOUNT OF
25 HISTORIC NATURAL DEPLETION TO THE WATERS OF THE STATE, IF ANY,
26 CAUSED BY PREEXISTING NATURAL VEGETATIVE COVER
27 EVAPOTRANSPIRATION FOR THE SURFACE AREAS MADE IMPERMEABLE AND
28 ASSOCIATED WITH THE PILOT PROJECT. THE APPLICANT MAY USE
29 APPLICABLE REGIONAL FACTORS ESTABLISHED PURSUANT TO
30 SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF THIS SUBSECTION (6).

31 (e) This paragraph (e), paragraphs (a), (b), and (d), and
32 subparagraph (f) of paragraph (c) of this subsection (6) are repealed,
33 effective July 1, 2020.

34 SECTION 2. In Colorado Revised Statutes, 37-92-305, add (12)
35 (d) as follows:

36 37-92-305. Standards with respect to rulings of the referee and
37 decisions of the water judge. (12) (d) IN DETERMINING THE QUANTITY
38 OF WATER REQUIRED IN AN AUGMENTATION PLAN TO REPLACE THE



1 PRECIPITATION CAPTURED OUT OF PRIORITY FROM ROOFTOPS AND
2 IMPERMEABLE SURFACES THAT WOULD HAVE ACCRUED TO A NATURAL
3 STREAM UNDER PREEXISTING, NATURAL VEGETATION CONDITIONS FOR A
4 PRECIPITATION HARVESTING PILOT PROJECT APPROVED PURSUANT TO
5 SECTION 37-60-115 (6), IF THE APPLICANT USES REGIONALLY APPLICABLE
6 FACTORS ESTABLISHED PURSUANT TO SECTION 37-60-115 (6)(b)(VI) FOR
7 THE AMOUNT OF PRECIPITATION CONSUMED THROUGH
8 EVAPOTRANSPIRATION OF PREEXISTING NATURAL VEGETATIVE COVER,
9 THERE IS A REBUTTABLE PRESUMPTION THAT THE FACTORS ARE
10 APPROPRIATE.

11 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, amend
12 (4) (a) (IV) and (5) (a) (IV) as follows:

13 **37-92-308. Substitute water supply plans - special procedures**
14 **for review - water adjudication cash fund - legislative declaration -**
15 **repeal.** (4) (a) Beginning January 1, 2002, if an application for approval
16 of a plan for augmentation, rotational crop management contract, or
17 change of water right has been filed with a water court and the court has
18 not issued a decree, the state engineer may approve the temporary
19 operation of such plan, contract, or change of water right as a substitute
20 water supply plan if the following conditions are met:

21 (IV) (A) The state engineer, after consideration of the comments
22 received, has determined that the operation and administration of such
23 plan will replace all out-of-priority depletions in time, location, and
24 amount and will otherwise prevent injury to other water rights and
25 decreed conditional water rights, including water quality and continuity
26 to meet the requirements of use to which the senior appropriation has
27 normally been put, pursuant to section 37-80-120 (3), and will not impair
28 compliance with any interstate compacts.

29 (B) Notwithstanding any limitations regarding phreatophytes or
30 impermeable surfaces that would otherwise apply pursuant to section
31 37-92-103 (9) or 37-92-501 (4) (b) (III), for any precipitation harvesting
32 pilot project selected pursuant to section 37-60-115 (6) that has filed an
33 application for a permanent augmentation plan in water court, the
34 ~~out-of-priority depletions shall be the net depletion as defined in section~~
35 ~~37-60-115 (6) (c) (II) (B)~~ APPLICANT SHALL FULLY AUGMENT ANY
36 PRECIPITATION CAPTURED OUT OF PRIORITY THAT WOULD OTHERWISE
37 HAVE ACCRUED TO A NATURAL STREAM; EXCEPT THAT, IN DETERMINING
38 THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY
39 PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO
40 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL
41 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY

1 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR
2 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE
3 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS
4 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI). As a
5 condition of approving a substitute water supply plan for a pilot project
6 pursuant to this subsection (4), the state engineer shall have the authority
7 to require the project sponsor to replace any ongoing delayed depletions
8 after the water use plan associated with a precipitation harvesting pilot
9 project has ceased.

10 (C) The state engineer shall impose such terms and conditions as
11 are necessary to ensure that these standards are met. In making such
12 determinations, the state engineer shall not be required to hold any formal
13 hearings or conduct any other formal proceedings, but may conduct a
14 hearing or formal proceeding if the state engineer finds it necessary to
15 address the issues.

16 (5) (a) Beginning January 1, 2002, for new water use plans
17 involving out-of-priority diversions or a change of water right, if no
18 application for approval of a plan for augmentation or a change of water
19 right has been filed with a water court and the water use plan or change
20 proposed and the depletions associated with such water use plan or
21 change will be for a limited duration not to exceed five years, except as
22 otherwise provided in subparagraph (II) of paragraph (b) of this
23 subsection (5), the state engineer may approve such plan or change as a
24 substitute water supply plan if the following conditions are met:

25 (IV) (A) The state engineer, after consideration of the comments
26 received, has determined that the operation and administration of such
27 plan will replace all out-of-priority depletions in time, location, and
28 amount and will otherwise prevent injury to other water rights and
29 decreed conditional water rights, including water quality and continuity
30 to meet the requirements of use to which the senior appropriation has
31 normally been put, pursuant to section 37-80-120 (3), and will not impair
32 compliance with any interstate compacts.

33 (B) NOTWITHSTANDING ANY LIMITATIONS REGARDING
34 PHREATOPHYTES OR IMPERMEABLE SURFACES THAT WOULD OTHERWISE
35 APPLY PURSUANT TO SECTION 37-92-103 (9) OR 37-92-501 (4) (b) (III),
36 FOR ANY PRECIPITATION HARVESTING PILOT PROJECT SELECTED PURSUANT
37 TO SECTION 37-60-115 (6), THE APPLICANT SHALL FULLY AUGMENT ANY
38 PRECIPITATION CAPTURED OUT OF PRIORITY THAT WOULD OTHERWISE
39 HAVE ACCRUED TO A NATURAL STREAM; EXCEPT THAT, IN DETERMINING
40 THE QUANTITY OF WATER REQUIRED FOR THE SUBSTITUTE WATER SUPPLY
41 PLAN TO REPLACE OUT-OF-PRIORITY STREAM DEPLETIONS, THERE IS NO

1 REQUIREMENT TO REPLACE THE AMOUNT OF HISTORIC NATURAL
2 DEPLETION TO THE WATERS OF THE STATE, IF ANY, CAUSED BY
3 PREEXISTING NATURAL VEGETATIVE COVER EVAPOTRANSPIRATION FOR
4 THE SURFACE AREAS MADE IMPERMEABLE AND ASSOCIATED WITH THE
5 PILOT PROJECT. THE APPLICANT MAY USE APPLICABLE REGIONAL FACTORS
6 ESTABLISHED PURSUANT TO SECTION 37-60-115 (6) (b) (VI).

7 (C) The state engineer shall impose such terms and conditions as
8 are necessary to ensure that these standards are met. In making the
9 determinations specified in this subparagraph (IV), the state engineer
10 shall not be required to hold any formal hearings or conduct any other
11 formal proceedings, but may conduct a hearing or formal proceeding if
12 the state engineer finds it necessary to address the issues."

13 Renumber succeeding section accordingly.

14 Page 5, line 22, strike "on" and substitute "before, on,".

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