

**Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 04-0221.01 Thomas Morris

HOUSE BILL 04-1040

HOUSE SPONSORSHIP

Salazar, Miller, Rippy, and White

SENATE SPONSORSHIP

Taylor, Entz, and Isgar

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REQUIREMENT TO MITIGATE THE EFFECTS ON THE**
102 **WATER BASIN OF ORIGIN OF A DIVERSION OF WATER FROM A**
103 **WATER BASIN.**

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. Requires that a water judge include, in each decree for a water right that diverts water from one water division into another, conditions to ensure that the present appropriation of water and prospective beneficial uses of water within the water division from which the water is exported will not be impaired or increased in cost at the expense of the water users in that division. Requires the applicant for the decree to show that such exportation is

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.

needed after the preparation of an integrated water supply and demand plan and after an analysis of reasonable alternatives to such export. Specifies that these requirements do not apply if the applicant has reached an enforceable mitigation agreement with a water conservation or conservancy district from within whose boundaries the waters are proposed for diversion.

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

2 **SECTION 1.** 37-92-305, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **37-92-305. Standards with respect to rulings of the referee and**
5 **decisions of the water judge.** (17) (a) THE WATER JUDGE MAY NOT
6 DECREE OR OTHERWISE RECOGNIZE A WATER RIGHT OR CHANGE OF WATER
7 RIGHT DIVERTING WATER FROM ONE WATER DIVISION TO ANOTHER, EITHER
8 DIRECTLY OR BY EXCHANGE, UNLESS THE DECREE INCLUDES TERMS AND
9 CONDITIONS TO REQUIRE THAT THE PRESENT APPROPRIATION OF WATER
10 AND PROSPECTIVE BENEFICIAL USES OF WATER WITHIN THE WATER
11 DIVISION FROM WHICH THE WATER IS EXPORTED WILL NOT BE IMPAIRED OR
12 INCREASED IN COST AT THE EXPENSE OF THE WATER USERS IN THAT
13 DIVISION. THE REQUIREMENTS OF THIS SUBSECTION (17) SHALL BE
14 DEEMED TO HAVE BEEN SATISFIED IF THE APPLICANT DEMONSTRATES THAT
15 IT HAS ENTERED INTO AN ENFORCEABLE MITIGATION AGREEMENT WITH THE
16 WATER CONSERVATION DISTRICT AND EACH WATER CONSERVANCY
17 DISTRICT FROM WITHIN WHOSE BOUNDARIES THE WATERS ARE PROPOSED
18 FOR DIVERSION AND THE TERMS AND CONDITIONS OF THE AGREEMENT ARE
19 INCLUDED IN THE DECREE.

20 (b) A WATER CONSERVATION DISTRICT OR WATER CONSERVANCY
21 DISTRICT THAT PROPOSES TO ENTER INTO A MITIGATION AGREEMENT
22 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (17) SHALL PROVIDE

1 NOTICE OF EITHER THE TERMS OR THE SUBSTANCE OF THE PROPOSED
2 AGREEMENT, OR A DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED,
3 TO BOTH THE WATER COURT AND THE DIVISION OF WATER RESOURCES.
4 THE CLERK OF THE WATER COURT SHALL PUBLISH THE NOTICE IN THE
5 WATER COURT RESUME. THE DIVISION OF WATER RESOURCES SHALL
6 PUBLISH THE NOTICE ON ITS WEB SITE. THE WATER CONSERVATION
7 DISTRICT OR WATER CONSERVANCY DISTRICT SHALL MAIL COPIES OF THE
8 NOTICE TO ALL PERSONS WHO HAVE REQUESTED NOTICE IN ADVANCE
9 PURSUANT TO SECTION 37-92-308 (6).

10 (c) A WATER CONSERVATION DISTRICT OR WATER CONSERVANCY
11 DISTRICT THAT PROPOSES TO ENTER INTO A MITIGATION AGREEMENT
12 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (17) SHALL HOLD A
13 PUBLIC HEARING AT WHICH IT SHALL AFFORD INTERESTED PERSONS AN
14 OPPORTUNITY TO SUBMIT WRITTEN DATA, VIEWS, OR ARGUMENTS AND TO
15 PRESENT THE SAME ORALLY. THE DISTRICT SHALL CONSIDER ALL SUCH
16 SUBMISSIONS. A PROPOSED AGREEMENT THAT IS TO BE CONSIDERED AT
17 THE PUBLIC HEARING SHALL BE MADE AVAILABLE TO ANY PERSON AT
18 LEAST FIVE DAYS BEFORE THE HEARING.

19 (d) NOTHING IN THIS SUBSECTION (17) SHALL ABROGATE OR IMPAIR
20 ANY STATE OR LOCAL LAND USE OR ENVIRONMENTAL AUTHORITY.

21 **SECTION 2. Applicability.** This act shall apply to applications
22 for water right decrees filed 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.