

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 23-0640.02 Sarah Lozano x3858

SENATE BILL 23-270

SENATE SPONSORSHIP

Roberts and Simpson,

HOUSE SPONSORSHIP

McCormick,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 **CONCERNING ACTIVITIES THAT RESTORE THE ENVIRONMENTAL**
102 **HEALTH OF NATURAL STREAM SYSTEMS WITHOUT**
103 **ADMINISTRATION.**

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://leg.colorado.gov>.)

The bill creates a rebuttable presumption that a project that is designed and constructed within a natural stream system for certain restoration purposes (stream restoration project) does not cause material injury to vested water rights (rebuttable presumption). A holder of a vested water right may challenge the rebuttable presumption by

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

sufficiently demonstrating in a court of competent jurisdiction that the operation of the stream restoration project has caused material injury to a vested water right.

The bill also requires that, at least 63 calendar days before the commencement of a stream restoration project, the owner or proponent of the stream restoration project register the project with the state engineer and provide notice to the substitute water supply plan notification list (registration and notice requirement).

Upon the completion of a stream restoration project, the owner or proponent of the stream restoration project shall file a completion report with the state engineer.

If a stream restoration project is limited to certain minor restoration activities:

- The stream restoration project does not cause material injury to any vested water right;
- The stream restoration project is not an unnecessary dam or other obstruction; and
- The owner or proponent of the stream restoration project is not required to comply with the registration and notice requirement.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Functioning natural streams are beneficial to all Coloradans
5 because they provide clean water for farms and cities as well as
6 broad-based public safety and ecological services, including:

- 7 (I) Forest and watershed health;
- 8 (II) Wildfire mitigation and recovery;
- 9 (III) Flood safety;
- 10 (IV) Water quality;
- 11 (V) Recreation; and
- 12 (VI) Riparian and aquatic habitats;

13 (b) Functioning natural streams that are connected to floodplains
14 balance the patterns of sediment erosion and deposition, which protects

1 water infrastructure, including diversion structures, ditches, pumps, pipes,
2 and reservoirs, that are susceptible to damage and adverse impacts from
3 sedimentation, especially sedimentation resulting from fires and floods;

4 (c) Stream restoration projects are an essential tool for water
5 project developers and wastewater and stormwater dischargers to meet
6 regulatory obligations;

7 (d) Stream restoration projects address the legacy of water quality
8 and habitat impacts from abandoned mines or catastrophic mine spills that
9 have deprived entire communities of safe drinking water; and

10 (e) The Colorado water plan sets a vision for thriving watersheds
11 and calls for multi-benefit projects that restore stream health to enhance
12 water supply security for agriculture, communities, tourism, and
13 ecosystem function.

14 (2) The general assembly therefore declares that, because of the
15 vast amount of benefits that natural streams provide the state's
16 communities and environment, the state should facilitate and encourage
17 the commencement of projects that restore the environmental health of
18 natural stream systems.

19 **SECTION 2.** In Colorado Revised Statutes, 37-92-602, **add** (9)
20 as follows:

21 **37-92-602. Exemptions - presumptions - stream restoration**
22 **projects - report - legislative declaration - definitions.** (9) (a) THE
23 GENERAL ASSEMBLY HEREBY DECLARES THAT STREAM RESTORATION
24 PROJECTS ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY,
25 WELFARE, PROPERTY, AND THE ENVIRONMENT.

26 (b) AS USED IN THIS SUBSECTION (9), UNLESS THE CONTEXT
27 OTHERWISE REQUIRES:

1 (I) "MINOR STREAM RESTORATION ACTIVITY" MEANS ANY OR ALL
2 OF THE FOLLOWING ACTIVITIES:

3 (A) STABILIZING THE BANKS OR SUBSTRATE OF A NATURAL
4 STREAM WITH HARD, BIOENGINEERED, OR NATURAL MATERIALS THAT,
5 UNDER LESS THAN EXTREME FLOW CONDITIONS, ALLOW WATER TO FLOW
6 DOWNSTREAM, DO NOT CAUSE THE WATER LEVEL TO EXCEED THE
7 ORDINARY HIGH WATER MARK, AND MAY INCIDENTALLY INCREASE
8 SURFACE AREA OF THE NATURAL STREAM;

9 (B) MECHANICAL GRADING OF THE GROUND SURFACE ALONG A
10 NATURAL STREAM SYSTEM IN A MANNER THAT DOES NOT RESULT IN
11 GROUNDWATER EXPOSURE, DIVERSIONS OF SURFACE WATER, OR THE
12 COLLECTION OF STORM WATER;

13 (C) STABILIZING AN EPHEMERAL OR INTERMITTENT NATURAL
14 STREAM BY INSTALLING DEFORMABLE AND POROUS STRUCTURES INTO THE
15 BANKS AND SUBSTRATE, WHICH MAY INCIDENTALLY AND TEMPORARILY
16 INCREASE SURFACE AREA OR INFILTRATION;

17 (D) DAYLIGHTING A NATURAL STREAM THAT HAS BEEN PIPED OR
18 BURIED;

19 (E) REDUCING THE SURFACE AREA OF A NATURAL STREAM TO
20 ADDRESS REDUCTIONS IN HISTORICAL FLOW AMOUNTS; AND

21 (F) INSTALLING STRUCTURES OR RECONSTRUCTING A CHANNEL IN
22 A NATURAL STREAM SYSTEM FOR THE SOLE PURPOSE OF RECOVERY FROM
23 THE IMPACTS OF A WILDLAND FIRE OR FLOOD EMERGENCY.

24 (II) "NATURAL STREAM" HAS THE MEANING SET FORTH IN SECTION
25 37-87-102 (1)(b).

26 (III) "NATURAL STREAM SYSTEM" MEANS THE EXTENT OF A
27 NATURAL STREAM IN THE STATE AND THE GEOMORPHIC FLOODPLAIN AND

1 ASSOCIATED RIPARIAN AREA.

2 (IV) "STREAM RESTORATION PROJECT" MEANS A PROJECT THAT IS
3 DESIGNED AND CONSTRUCTED:

4 (A) WITHIN A NATURAL STREAM SYSTEM; AND

5 (B) FOR THE PURPOSES OF WILDLAND FIRE MITIGATION; FLOOD
6 MITIGATION; BANK STABILIZATION; WATER QUALITY PROTECTION OR
7 RESTORATION; HABITAT, SPECIES, OR ECOSYSTEM RESTORATION; =====
8 SOURCE WATER PROTECTION; INFRASTRUCTURE PROTECTION; OR
9 SEDIMENT AND EROSION MANAGEMENT.

10 =====

11 (c) IF A STREAM RESTORATION PROJECT IS LIMITED TO ONE OR
12 MORE MINOR STREAM RESTORATION ACTIVITIES:

13 (I) THE STREAM RESTORATION PROJECT DOES NOT CAUSE
14 MATERIAL INJURY TO ANY VESTED WATER RIGHT; AND

15 (II) THE STREAM RESTORATION PROJECT IS NOT AN UNNECESSARY
16 DAM OR OTHER OBSTRUCTION.

17 =====

18 (d) THE OWNER OR PROPONENT OF A STREAM RESTORATION
19 PROJECT SHALL NOT INSTALL THE STREAM RESTORATION PROJECT IN A
20 MANNER THAT ADVERSELY AFFECTS THE FUNCTION OF STRUCTURES USED
21 TO DIVERT WATER OR MEASURE WATER FLOW BY HOLDERS OF VESTED
22 WATER RIGHTS WITHOUT THE PERMISSION OF THE OWNERS OF THE
23 STRUCTURES.

24 =====

25 (e) NOTWITHSTANDING ANY PROVISION IN THIS SUBSECTION (9) TO
26 THE CONTRARY, NOTHING IN THIS SUBSECTION (9):

27 (I) CREATES A PRESUMPTION OF INJURY FOR ANY ACTIVITY THAT

1 DOES NOT MEET THE DEFINITION OF A MINOR STREAM RESTORATION
2 ACTIVITY PURSUANT TO SUBSECTION (9)(b)(I) OF THIS SECTION;

3 (II) CREATES A BASIS FOR A WATER RIGHT, CREDIT, OR OTHER
4 RIGHT FOR THE USE OF WATER;

5 (III) CREATES PRECEDENT FOR THE LITIGATION OF, CREATES A
6 LEGISLATIVE DETERMINATION OF, ALTERS, OR AFFECTS ANY REAL
7 PROPERTY INTERESTS, INCLUDING EXPRESS OR PRESCRIPTIVE FLOWAGE
8 EASEMENTS AFFECTING LAND ALONG A PUBLIC STREAM HELD BY ANY
9 POLITICAL SUBDIVISION OR PERSON;

10 (IV) PROHIBITS THE STATE ENGINEER FROM TAKING ANY ACTION
11 NECESSARY TO COMPLY WITH AN INTERSTATE COMPACT, INTERSTATE
12 APPORTIONMENT DECREE, OR INTERSTATE AGREEMENT;

13 (V) ALTERS, AMENDS, OR AFFECTS ANY FEDERAL, STATE, OR
14 LOCAL LAW OR REQUIREMENT THAT OTHERWISE APPLIES TO A STREAM
15 RESTORATION PROJECT; OR

16 (VI) IMPAIRS OR IN ANY WAY AFFECTS THE ABILITY OF ANY
17 PERSON TO APPROPRIATE WATER FOR PURPOSES RELATED TO A STREAM
18 RESTORATION PROJECT.

19 (f) A STREAM RESTORATION PROJECT THAT HAS OBTAINED ANY
20 APPLICABLE PERMITS OR IS UNDER CONSTRUCTION OR COMPLETED BY
21 AUGUST 1, 2023 DOES NOT CAUSE MATERIAL INJURY TO ANY VESTED
22 WATER RIGHT AND IS NOT AN UNNECESSARY DAM OR OTHER OBSTRUCTION.

23 **SECTION 3. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly; except
26 that, if a referendum petition is filed pursuant to section 1 (3) of article V
27 of the state constitution against this act or an item, section, or part of this

1 act within such period, then the act, item, section, or part will not take
2 effect unless approved by the people at the general election to be held in
3 November 2024 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.