

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

**INTRODUCED**

LLS NO. 19-0997.03 Jennifer Berman x3286

**HOUSE BILL 19-1271**

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**HOUSE SPONSORSHIP**

**Arndt,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**  
Rural Affairs & Agriculture

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING A CLARIFICATION OF THE AUTHORITY OF THE**  
102            **COLORADO WATER CONSERVATION BOARD TO AUGMENT**  
103            **STREAM FLOWS WITH ACQUIRED WATER RIGHTS THAT HAVE**  
104            **BEEN PREVIOUSLY DECREED FOR AUGMENTATION USE.**

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**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 clarifies that the Colorado water conservation board may augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been

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

previously quantified and changed to include augmentation use, without a further change of the water right being required.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-102, **amend**  
3 (3) introductory portion; and **add** (3)(f) as follows:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**  
5 **water law.** (3) Further recognizing the need to correlate the activities of  
6 mankind with some reasonable preservation of the natural environment,  
7 the Colorado water conservation board is hereby vested with the  
8 exclusive authority, on behalf of the people of the state of Colorado, to  
9 appropriate in a manner consistent with sections 5 and 6 of article XVI of  
10 the state constitution, such waters of natural streams and lakes as the  
11 board determines may be required for minimum stream flows or for  
12 natural surface water levels or volumes for natural lakes to preserve the  
13 natural environment to a reasonable degree. In the adjudication of water  
14 rights pursuant to this ~~article~~ ARTICLE 92 and other applicable law, no  
15 other person or entity shall be granted a decree adjudicating a right to  
16 water or interests in water for instream flows in a stream channel between  
17 specific points, or for natural surface water levels or volumes for natural  
18 lakes, for any purpose whatsoever. The board also may acquire, by grant,  
19 purchase, donation, bequest, devise, lease, exchange, or other contractual  
20 agreement, from or with any person, including any governmental entity,  
21 such water, water rights, or interests in water that are not on the division  
22 engineer's abandonment list in such amount as the board determines is  
23 appropriate for stream flows or for natural surface water levels or  
24 volumes for natural lakes to preserve or improve the natural environment  
25 to a reasonable degree. At the request of any person, including any

1 governmental entity, the board shall determine in a timely manner, not to  
2 exceed one hundred twenty days unless further time is granted by the  
3 requesting person or entity, what terms and conditions it will accept in a  
4 contract or agreement for such acquisition. Any contract or agreement  
5 executed between the board and any person or governmental entity that  
6 provides water, water rights, or interests in water to the board shall be  
7 enforceable by either party thereto as a water matter under this ~~article~~  
8 ARTICLE 92, according to the terms of the contract or agreement. The  
9 board shall adopt criteria for evaluating proposed contracts or agreements  
10 for leases or loans of water, water rights, or interests in water under this  
11 subsection (3), including but not limited to, criteria addressing public  
12 notice, the extent to which the leased or loaned water will benefit the  
13 natural environment to a reasonable degree, and calculation of the  
14 compensation paid to the lessor of the water based upon the use of the  
15 water after the term of the lease. As a condition of approval of a proposed  
16 contract or agreement for a lease or loan of water, water rights, or  
17 interests in water pursuant to this subsection (3), the board shall obtain  
18 confirmation from the division engineer that the proposal is administrable  
19 and is capable of meeting all applicable statutory requirements. All  
20 contracts or agreements entered into by the board for leases or loans of  
21 water, water rights, or interests in water pursuant to this subsection (3)  
22 shall require the board to maintain records of how much water the board  
23 uses under the contract or agreement each year it is in effect and to install  
24 any measuring devices deemed necessary by the division engineer to  
25 administer the contract or agreement and to measure and record how  
26 much water flows out of the reach after use by the board under the  
27 contract or agreement, unless a measuring device already exists on the

1 stream that meets the division engineer's requirements. All contracts or  
2 agreements for water, water rights, or interests in water under this  
3 subsection (3) shall provide that, pursuant to the water court decree  
4 implementing the contract or agreement, the board or the lessor, lender,  
5 or donor of the water may bring about beneficial use of the historical  
6 consumptive use of the leased, loaned, or donated water right downstream  
7 of the instream flow reach as fully consumable reusable water. The board  
8 shall file a change of water right application or other WATER COURT  
9 application with the water court to obtain a decreed right to use water for  
10 instream flow purposes OR AS MAY BE REQUIRED TO AUGMENT STREAM  
11 FLOWS under a contract or agreement for a lease or loan of water, water  
12 rights, or interests in water pursuant to this subsection (3). The resulting  
13 water court decree shall quantify the historical consumptive use of the  
14 leased or loaned water right and determine the method by which the  
15 historical consumptive use should be quantified and credited during the  
16 term of the agreement for the lease or loan of the water right. Said method  
17 shall recognize the actual amount of consumptive use available under the  
18 leased or loaned water right and shall not result in a reduction of the  
19 historical consumptive use of that water right during the term of the lease  
20 or loan, except to the extent such reduction is based upon the actual  
21 amount of water available under said rights. All water rights under such  
22 decrees shall be administered in priority. The board may not accept a  
23 donation of water rights that either would require the removal of existing  
24 infrastructure without approval of the current owner of such infrastructure  
25 or that were acquired by condemnation. The board may use any funds  
26 available to it for acquisition of water rights and their conversion to  
27 instream flow rights. The board may initiate such applications as it

1 determines are necessary or desirable for utilizing water, water rights, or  
2 interests in water appropriated, acquired, or held by the board, including  
3 applications for changes of water rights, exchanges, or augmentation  
4 plans. THE BOARD MAY, PURSUANT TO A DECREED AUGMENTATION PLAN,  
5 AUGMENT STREAM FLOWS TO PRESERVE OR IMPROVE THE NATURAL  
6 ENVIRONMENT TO A REASONABLE DEGREE IN A STREAM REACH ANY  
7 WATER RIGHT THAT HAS PREVIOUSLY BEEN QUANTIFIED AND CHANGED TO  
8 INCLUDE AUGMENTATION USE WITHOUT A FURTHER CHANGE OF THAT  
9 WATER RIGHT BEING REQUIRED; EXCEPT THAT ANY SUCH USE IS SUBJECT  
10 TO THE IMPOSITION OF ANY TERMS AND CONDITIONS THAT ARE NECESSARY  
11 TO PREVENT INJURY TO THE OWNERS OF VESTED WATER RIGHTS OR  
12 DECREED CONDITIONAL WATER RIGHTS THAT MAY RESULT FROM SUCH  
13 USE. SUCH USE SHALL BE CONSIDERED BY THE REFEREE OR WATER JUDGE,  
14 AS THE CASE MAY BE, TO BE A DECREED AUGMENTATION USE SUCH THAT  
15 NO CHANGE IS REQUIRED IF SUCH USE DOES NOT VIOLATE THE TERMS AND  
16 CONDITIONS OF ANY APPLICABLE DECREES FOR THAT WATER RIGHT.  
17 WATER USED TO AUGMENT STREAM FLOWS TO PRESERVE OR IMPROVE THE  
18 NATURAL ENVIRONMENT TO A REASONABLE DEGREE IN A STREAM REACH  
19 PURSUANT TO A DECREED PLAN FOR AUGMENTATION SHALL NOT BE  
20 DIVERTED BY EXCHANGES, SUBSTITUTION PLANS, PLANS FOR  
21 AUGMENTATION, OR OTHER MEANS THAT CAUSE A REDUCTION OF SUCH  
22 WATER IN THE STREAM. Prior to the initiation of any such appropriation  
23 or acquisition, the board shall request recommendations from the division  
24 of parks and wildlife. The board also shall request recommendations from  
25 the United States department of agriculture and the United States  
26 department of the interior. Nothing in this ~~article~~ ARTICLE 92 shall be  
27 construed as authorizing any state agency to acquire water by eminent

1 domain or to deprive the people of the state of Colorado of the beneficial  
2 use of those waters available by law and interstate compact. Nothing in  
3 this subsection (3) shall impact section 37-60-121 (2.5). Any  
4 appropriation made pursuant to this subsection (3) shall be subject to the  
5 following principles and limitations:

6 (f) THIS SUBSECTION (3):

7 (I) DOES NOT IMPAIR OR IN ANY WAY AFFECT ANY WATER COURT  
8 DECREE, ADMINISTRATIVE AUTHORIZATION, OR AGREEMENT THAT ALLOWS  
9 WATER DECREED FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY,  
10 RECREATIONAL, OR OTHER IN-CHANNEL PURPOSES TO BE USED IN THE  
11 NATURAL STREAM CHANNEL FOR THE DECREED PURPOSES;

12 (II) IS NOT INTENDED TO BE THE EXCLUSIVE MEANS OF  
13 AUTHORIZING WATER DECREED FOR AUGMENTATION PURPOSES TO BE USED  
14 FOR ENVIRONMENTAL, PISCATORIAL, WATER QUALITY, RECREATIONAL, OR  
15 OTHER IN-CHANNEL PURPOSES, INCLUDING THE MAINTENANCE OF  
16 DOMINION AND CONTROL OVER THE WATER RELEASED FROM A SPECIFIC  
17 RESERVOIR; AND

18 (III) DOES NOT AUTHORIZE, RESTRICT, OR PRECLUDE FUTURE  
19 WATER RIGHTS, APPROPRIATIONS, ADMINISTRATIVE AUTHORIZATIONS, OR  
20 OTHER AGREEMENTS FOR THE PURPOSES LISTED IN THIS SUBSECTION (3)(f).

21 **SECTION 2. Act subject to petition - effective date.** This act  
22 takes effect at 12:01 a.m. on the day following the expiration of the  
23 ninety-day period after final adjournment of the general assembly (August  
24 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a  
25 referendum petition is filed pursuant to section 1 (3) of article V of the  
26 state constitution against this act or an item, section, or part of this act  
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in  
2 November 2020 and, in such case, will take effect on the date of the  
3 official declaration of the vote thereon by the governor.