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HOUSE BILL 08-1280

BY REPRESENTATIVE(S) Fischer, Levy, Madden, Pommer, Borodkin, Kefalas, Kerr A., King, Massey, McGihon, Primavera, Scanlan, Solano, Stafford, Todd, Weissmann, White, and Green;
also SENATOR(S) Schwartz, Gibbs, Tochtrop, Bacon, Groff, Harvey, Isgar, Kopp, Romer, Sandoval, Shaffer, Spence, Tupa, Wiens, Williams, and Windels.

CONCERNING PROTECTION OF WATER RIGHTS USED BY THE COLORADO
WATER CONSERVATION BOARD FOR INSTREAM FLOWS UNDER
CONTRACTS WITH WATER RIGHTS OWNERS.

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

SECTION 1. The introductory portion to 37-92-102 (3), Colorado Revised Statutes, is amended to read:

37-92-102. Legislative declaration - basic tenets of Colorado water law. (3) Further recognizing the need to correlate the activities of mankind with some reasonable preservation of the natural environment, the Colorado water conservation board is hereby vested with the exclusive authority, on behalf of the people of the state of Colorado, to appropriate in a manner consistent with sections 5 and 6 of article XVI of the state constitution, such waters of natural streams and lakes as the board

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

determines may be required for minimum stream flows or for natural surface water levels or volumes for natural lakes to preserve the natural environment to a reasonable degree. In the adjudication of water rights pursuant to this article and other applicable law, no other person or entity shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, or for natural surface water levels or volumes for natural lakes, for any purpose whatsoever. The board also may acquire, by grant, purchase, donation, bequest, devise, lease, exchange, or other contractual agreement, from or with any person, including any governmental entity, such water, water rights, or interests in water THAT ARE NOT ON THE DIVISION ENGINEER'S ABANDONMENT LIST in such amount as the board determines is appropriate for stream flows or for natural surface water levels or volumes for natural lakes to preserve or improve the natural environment to a reasonable degree. At the request of any person, including any governmental entity, the board shall determine in a timely manner, not to exceed one hundred twenty days unless further time is granted by the requesting person or entity, what terms and conditions it will accept in a contract or agreement for such acquisition. Any contract or agreement executed between the board and any person or governmental entity that provides water, water rights, or interests in water to the board shall be enforceable by either party thereto as a water matter under this article, according to the terms of the contract or agreement. THE BOARD SHALL ADOPT CRITERIA FOR EVALUATING PROPOSED CONTRACTS OR AGREEMENTS FOR LEASES OR LOANS OF WATER, WATER RIGHTS, OR INTERESTS IN WATER UNDER THIS SUBSECTION (3), INCLUDING, BUT NOT LIMITED TO, CRITERIA ADDRESSING PUBLIC NOTICE, THE EXTENT TO WHICH THE LEASED OR LOANED WATER WILL BENEFIT THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE, AND CALCULATION OF THE COMPENSATION PAID TO THE LESSOR OF THE WATER BASED UPON THE USE OF THE WATER AFTER THE TERM OF THE LEASE. AS A CONDITION OF APPROVAL OF A PROPOSED CONTRACT OR AGREEMENT FOR A LEASE OR LOAN OF WATER, WATER RIGHTS, OR INTERESTS IN WATER PURSUANT TO THIS SUBSECTION (3), THE BOARD SHALL OBTAIN CONFIRMATION FROM THE DIVISION ENGINEER THAT THE PROPOSAL IS ADMINISTRABLE AND IS CAPABLE OF MEETING ALL APPLICABLE STATUTORY REQUIREMENTS. ALL CONTRACTS OR AGREEMENTS ENTERED INTO BY THE BOARD FOR LEASES OR LOANS OF WATER, WATER RIGHTS, OR INTERESTS IN WATER PURSUANT TO THIS SUBSECTION (3) SHALL REQUIRE THE BOARD TO MAINTAIN RECORDS OF HOW MUCH WATER THE BOARD USES UNDER THE CONTRACT OR AGREEMENT EACH YEAR IT IS IN EFFECT AND TO INSTALL ANY MEASURING DEVICES DEEMED NECESSARY BY THE DIVISION

ENGINEER TO ADMINISTER THE CONTRACT OR AGREEMENT AND TO MEASURE AND RECORD HOW MUCH WATER FLOWS OUT OF THE REACH AFTER USE BY THE BOARD UNDER THE CONTRACT OR AGREEMENT, UNLESS A MEASURING DEVICE ALREADY EXISTS ON THE STREAM THAT MEETS THE DIVISION ENGINEER'S REQUIREMENTS. ALL CONTRACTS OR AGREEMENTS FOR WATER, WATER RIGHTS, OR INTERESTS IN WATER UNDER THIS SUBSECTION (3) SHALL PROVIDE THAT, PURSUANT TO THE WATER COURT DECREE IMPLEMENTING THE CONTRACT OR AGREEMENT, THE BOARD OR THE LESSOR, LENDER, OR DONOR OF THE WATER MAY BRING ABOUT BENEFICIAL USE OF THE HISTORICAL CONSUMPTIVE USE OF THE LEASED, LOANED, OR DONATED WATER RIGHT DOWNSTREAM OF THE INSTREAM FLOW REACH AS FULLY CONSUMABLE REUSABLE WATER. THE BOARD SHALL FILE A CHANGE OF WATER RIGHT APPLICATION OR OTHER APPLICATION WITH THE WATER COURT TO OBTAIN A DECREED RIGHT TO USE WATER FOR INSTREAM FLOW PURPOSES UNDER A CONTRACT OR AGREEMENT FOR A LEASE OR LOAN OF WATER, WATER RIGHTS, OR INTERESTS IN WATER PURSUANT TO THIS SUBSECTION (3). THE RESULTING WATER COURT DECREE SHALL QUANTIFY THE HISTORICAL CONSUMPTIVE USE OF THE LEASED OR LOANED WATER RIGHT AND DETERMINE THE METHOD BY WHICH THE HISTORICAL CONSUMPTIVE USE SHOULD BE QUANTIFIED AND CREDITED DURING THE TERM OF THE AGREEMENT FOR THE LEASE OR LOAN OF THE WATER RIGHT. SAID METHOD SHALL RECOGNIZE THE ACTUAL AMOUNT OF CONSUMPTIVE USE AVAILABLE UNDER THE LEASED OR LOANED WATER RIGHT AND SHALL NOT RESULT IN A REDUCTION OF THE HISTORICAL CONSUMPTIVE USE OF THAT WATER RIGHT DURING THE TERM OF THE LEASE OR LOAN, EXCEPT TO THE EXTENT SUCH REDUCTION IS BASED UPON THE ACTUAL AMOUNT OF WATER AVAILABLE UNDER SAID RIGHTS. ALL WATER RIGHTS UNDER SUCH DECREES SHALL BE ADMINISTERED IN PRIORITY. The board may not accept a donation of water rights that either would require the removal of existing infrastructure without approval of the current owner of such infrastructure or that were acquired by condemnation. The board may use any funds available to it, other than the construction fund created in section 37-60-121, for acquisition of water rights and their conversion to instream flow rights. The board may initiate such applications as it determines are necessary or desirable for utilizing water, water rights, or interests in water appropriated, acquired, or held by the board, including applications for changes of water rights, exchanges, or augmentation plans. Prior to the initiation of any such appropriation or acquisition, the board shall request recommendations from the division of wildlife and the division of parks and outdoor recreation. The board also shall request recommendations from the United States

department of agriculture and the United States department of the interior. Nothing in this article shall be construed as authorizing any state agency to acquire water by eminent domain or to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact. Nothing in this subsection (3) shall impact section 37-60-121 (2.5). Any appropriation made pursuant to this subsection (3) shall be subject to the following principles and limitations:

SECTION 2. The introductory portion to 37-92-103 (2) (b), Colorado Revised Statutes, is amended, and the said 37-92-103 (2) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

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

(2) "Abandonment of a water right" means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder. Any period of nonuse of any portion of a water right shall be tolled, and no intent to discontinue permanent use shall be found for purposes of determining an abandonment of a water right for the duration that:

(b) The nonuse of a water right BY ITS OWNER is a result of participation in:

(VI) ANY CONTRACT OR AGREEMENT WITH THE COLORADO WATER CONSERVATION BOARD THAT ALLOWS THE BOARD TO USE ALL OR A PART OF A WATER RIGHT TO PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE UNDER SECTION 37-92-102 (3).

SECTION 3. 37-92-305 (3), Colorado Revised Statutes, is amended to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (3) (a) A change of water right, implementation of a rotational crop management contract, or plan for augmentation, including water exchange project, shall be approved if such change, contract, or plan will not injuriously affect the owner of or persons

entitled to use water under a vested water right or a decreed conditional water right. In cases in which a statement of opposition has been filed, the applicant shall provide to the referee or to the water judge, as the case may be, a proposed ruling or decree to prevent such injurious effect in advance of any hearing on the merits of the application, and notice of such proposed ruling or decree shall be provided to all parties who have entered the proceedings. If it is determined that the proposed change, contract, or plan as presented in the application and the proposed ruling or decree would cause such injurious effect, the referee or the water judge, as the case may be, shall afford the applicant or any person opposed to the application an opportunity to propose terms or conditions that would prevent such injurious effect.

(b) DECREES FOR CHANGES OF WATER RIGHTS THAT IMPLEMENT A CONTRACT OR AGREEMENT FOR A LEASE, LOAN, OR DONATION OF WATER, WATER RIGHTS, OR INTERESTS IN WATER TO THE COLORADO WATER CONSERVATION BOARD FOR INSTREAMFLOW USE UNDER SECTION 37-92-102 (3) (b) SHALL PROVIDE THAT THE BOARD OR THE LESSOR, LENDER, OR DONOR OF THE WATER MAY BRING ABOUT BENEFICIAL USE OF THE HISTORICAL CONSUMPTIVE USE OF THE CHANGED WATER RIGHT DOWNSTREAM OF THE INSTREAMFLOW REACH AS FULLY CONSUMABLE REUSABLE WATER, SUBJECT TO SUCH TERMS AND CONDITIONS AS THE WATER COURT DEEMS NECESSARY TO PREVENT INJURY TO VESTED WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to water court determinations of historic consumptive use and abandonment occurring on or after the applicable effective date of this act.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO