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

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LLS NO. 23-0640.02 Sarah Lozano x3858

SENATE BILL

SENATE SPONSORSHIP

Roberts and Simpson,

HOUSE SPONSORSHIP

(None),

BILL TOPIC: Projects To Restore Natural Stream Systems

DEADLINES: File by: 4/4/2023

A BILL FOR AN ACT

101 **CONCERNING PROJECTS THAT RESTORE THE ENVIRONMENTAL HEALTH**
102 **OF NATURAL STREAM SYSTEMS WITHOUT 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 sufficiently demonstrating in a court of competent jurisdiction that the

*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words indicate deletions from existing law.*

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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 notification 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 a 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 notification 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 _____

10 (III) Flood safety;

11 (IV) Water quality;

12 (V) Recreation; and

13 (VI) Riparian and aquatic habitats;

14 (b) Functioning natural streams that are connected to floodplains

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balance the patterns of sediment erosion and deposition, which protects water infrastructure, including diversion structures, ditches, pumps, pipes, and reservoirs, that are susceptible to damage and adverse impacts from sedimentation, especially sedimentation resulting from fires and floods;

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

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

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

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

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

37-92-602. Exemptions - presumptions - stream restoration projects - report - legislative declaration - definitions. (9) (a) THE GENERAL ASSEMBLY HEREBY DECLARES THAT STREAM RESTORATION PROJECTS ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY,

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WELFARE, PROPERTY, AND THE ENVIRONMENT.

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

=====

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

(A) STABILIZING THE BANKS OF A NATURAL STREAM SYSTEM WITH DEFORMABLE HARD OR BIOENGINEERED STRUCTURES COMPOSED OF WOOD, ROCK, OR NATURAL MATERIALS WITH THE PRIMARY OBJECTIVE OF STABILIZING THE NATURAL STREAM SYSTEM AND RESULTING IN ONLY AN INCIDENTAL INCREASE IN SURFACE AREA, NOT TO EXCEED THE ORDINARY HIGH WATER MARK OF THE NATURAL STREAM;

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

(C) INSTALLING DEFORMABLE STRUCTURES OR RECONSTRUCTING A CHANNEL FOR THE SOLE PURPOSE OF CONTROLLING EROSION ON AN EPHEMERAL OR INTERMITTENT NATURAL STREAM;

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

(E) REMOVING INVASIVE VEGETATION FROM OR PLANTING VEGETATION IN A NATURAL STREAM SYSTEM;

(F) BUILDING FENCING TO CONTROL THE MOVEMENT OF ANIMALS WITHIN AND AROUND A NATURAL STREAM SYSTEM; AND

(G) INSTALLING STRUCTURES OR RECONSTRUCTING A CHANNEL IN

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A NATURAL STREAM SYSTEM FOR THE SOLE PURPOSE OF RECOVERY FROM
THE IMPACTS OF A WILDLAND FIRE OR FLOOD EMERGENCY.

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

(III) "NATURAL STREAM SYSTEM" MEANS THE _____ EXTENT OF A
NATURAL STREAM IN THE STATE AND THE GEOMORPHIC FLOODPLAIN AND
ASSOCIATED RIPARIAN AREA.

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

(A) WITHIN A NATURAL STREAM SYSTEM; _____

(B) FOR THE PURPOSES OF WILDLAND FIRE MITIGATION, FLOOD
MITIGATION, BANK STABILIZATION, WATER QUALITY PROTECTION OR
RESTORATION, HABITAT OR ECOSYSTEM RESTORATION, DROUGHT
RESILIENCE, SOURCE WATER PROTECTION, INFRASTRUCTURE PROTECTION,
OR SEDIMENT AND EROSION MANAGEMENT; AND

(C) IN A MANNER THAT DOES NOT INCREASE THE WATER SURFACE
AREA OF THE NATURAL STREAM BY MORE THAN ONE-QUARTER ACRE PER
STRUCTURE OR TREATMENT AND THAT DOES NOT EXCEED A TOTAL
INCREASE OF EIGHT SURFACE ACRES FOR A SERIES OF STRUCTURES WITHIN
ONE STREAM MILE.

(c) (I) EXCEPT AS SET FORTH IN SUBSECTION (9)(f)(I) OF THIS
SECTION:

(A) THERE IS A REBUTTABLE PRESUMPTION THAT A STREAM
RESTORATION PROJECT DOES NOT CAUSE MATERIAL INJURY TO VESTED
WATER RIGHTS; AND

(B) THE HOLDER OF A VESTED WATER RIGHT MAY CHALLENGE THE
REBUTTABLE PRESUMPTION BY BRINGING AN ACTION IN THE WATER COURT

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1 FOR THE DIVISION IN WHICH THE STREAM RESTORATION PROJECT IS
2 CONDUCTED NO LATER THAN TWO YEARS AFTER THE FILING OF THE
3 COMPLETION REPORT REQUIRED PURSUANT TO SUBSECTION (9)(e) OF THIS
4 SECTION.

5 (II) THE HOLDER OF A VESTED WATER RIGHT MAY REBUT THE
6 REBUTTABLE PRESUMPTION PURSUANT TO SUBSECTION (9)(c)(I)(B) OF
7 THIS SECTION BY PRESENTING EVIDENCE SUFFICIENT TO SHOW THAT THE
8 OPERATION OF A STREAM RESTORATION PROJECT HAS CAUSED MATERIAL
9 INJURY TO THE VESTED WATER RIGHT.

10 (d) EXCEPT AS SET FORTH IN SUBSECTION (9)(f)(III) OF THIS
11 SECTION, AT LEAST SIXTY-THREE CALENDAR DAYS BEFORE THE
12 COMMENCEMENT OF A STREAM RESTORATION PROJECT, THE OWNER OR
13 PROPONENT OF THE STREAM RESTORATION PROJECT SHALL:

14 (I) REGISTER THE STREAM RESTORATION PROJECT WITH THE STATE
15 ENGINEER ON A FORM PRESCRIBED BY THE STATE ENGINEER; AND

16 (II) PROVIDE NOTICE TO THE SUBSTITUTE WATER SUPPLY PLAN
17 NOTIFICATION LIST MAINTAINED BY THE STATE ENGINEER PURSUANT TO
18 SECTION 37-92-308 (6) FOR THE WATER DIVISION IN WHICH THE STREAM
19 RESTORATION PROJECT IS PROPOSED. THE NOTICE MUST INCLUDE:

20 (A) THE LOCATION OF THE STREAM RESTORATION PROJECT,
21 INCLUDING THE NAME OF THE STREAM, THE COUNTY WHERE THE STREAM
22 RESTORATION PROJECT IS PROPOSED, AND THE APPROXIMATE ELEVATION
23 OF THE STREAM RESTORATION PROJECT;

24 (B) CONTACT INFORMATION FOR THE OWNER OR PROPONENT OF
25 THE STREAM RESTORATION PROJECT;

26 (C) A DESCRIPTION OF ANY PURPOSES OF THE STREAM
27 RESTORATION PROJECT, AS DESCRIBED IN SUBSECTION (9)(b)(IV)(B) OF

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1 THIS SECTION;
2 (D) A PROJECT MAP, DESIGN, AND DESCRIPTION DEMONSTRATING
3 THAT THE STREAM RESTORATION PROJECT IS DESIGNED IN ACCORDANCE
4 WITH THE REQUIREMENTS OF SUBSECTION (9)(b)(IV) OF THIS SECTION;
5 AND
6 (E) A SUMMARY OF THE OUTREACH REGARDING THE STREAM
7 RESTORATION PROJECT, INCLUDING A DESCRIPTION OF THE BEST EFFORTS
8 MADE TO PROVIDE NOTIFICATION OF THE STREAM RESTORATION PROJECT
9 TO NEIGHBORING PROPERTY OWNERS, OWNERS OF WATER RIGHTS THAT
10 ARE IMMEDIATELY DOWNSTREAM FROM THE STREAM RESTORATION
11 PROJECT. AND THE BASIN ROUNDTABLE OF THE WATER BASIN WHERE THE
12 STREAM RESTORATION PROJECT IS PROPOSED.
13 (e) UPON THE COMPLETION OF A STREAM RESTORATION PROJECT,
14 THE OWNER OR PROPONENT OF THE STREAM RESTORATION PROJECT SHALL
15 FILE A COMPLETION REPORT WITH THE STATE ENGINEER IN A FORM
16 PRESCRIBED BY THE STATE ENGINEER.
17 (f) IF A STREAM RESTORATION PROJECT IS LIMITED TO ONE OR
18 MORE MINOR STREAM RESTORATION ACTIVITIES:
19 (I) THE STREAM RESTORATION PROJECT DOES NOT CAUSE A
20 MATERIAL INJURY TO ANY VESTED WATER RIGHT;
21 (II) THE STREAM RESTORATION PROJECT IS NOT AN UNNECESSARY
22 DAM OR OTHER OBSTRUCTION; AND
23 (III) THE OWNER OR PROPONENT OF THE STREAM RESTORATION
24 PROJECT IS NOT REQUIRED TO COMPLETE THE REGISTRATION AND NOTICE
25 REQUIREMENTS DESCRIBED IN SUBSECTION (9)(d) OF THIS SECTION.
26 (g) THE OWNER OR PROPONENT OF A STREAM RESTORATION
27 PROJECT SHALL NOT INSTALL THE STREAM RESTORATION PROJECT IN A

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MANNER THAT ADVERSELY AFFECTS THE FUNCTION OF STRUCTURES USED
TO DIVERT WATER OR MEASURE WATER FLOW BY HOLDERS OF VESTED
WATER RIGHTS WITHOUT THE PERMISSION OF THE OWNERS OF THE
STRUCTURES.

(h) ON OR BEFORE FEBRUARY 1, 2026, THE STATE ENGINEER SHALL
REPORT THE FOLLOWING INFORMATION TO THE AGRICULTURE AND
NATURAL RESOURCES COMMITTEE OF THE SENATE AND THE AGRICULTURE,
WATER, AND NATURAL RESOURCES COMMITTEE OF THE HOUSE OF
REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES:

(I) THE TOTAL NUMBER OF STREAM RESTORATION PROJECTS THAT
HAVE BEEN REGISTERED PURSUANT TO SUBSECTION (9)(d)(I) OF THIS
SECTION;

(II) ANY COMPLAINT OF MATERIAL INJURY TO A VESTED WATER
RIGHT MADE PURSUANT TO SUBSECTION (9)(c)(I)(B) OF THIS SECTION; AND

(III) THE RESULTS OF ANY STUDIES THAT THE STATE ENGINEER IS
AWARE OF THAT EVALUATE IMPACTS TO HYDROLOGY OR WATER
AVAILABLE TO VESTED WATER RIGHTS HOLDERS DUE TO STREAM
RESTORATION PROJECTS IN THE STATE.

(i) NOTWITHSTANDING ANYTHING IN THIS SUBSECTION (9) TO THE
CONTRARY, NOTHING IN THIS SUBSECTION (9):

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

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

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1 (III) PROHIBITS THE STATE ENGINEER FROM TAKING ANY ACTION
2 NECESSARY TO COMPLY WITH AN INTERSTATE COMPACT, INTERSTATE
3 APPORTIONMENT DECREE, OR INTERSTATE AGREEMENT;
4 (IV) ALTERS, AMENDS, OR AFFECTS ANY FEDERAL, STATE, OR
5 LOCAL LAW OR REQUIREMENT THAT OTHERWISE APPLIES TO A STREAM
6 RESTORATION PROJECT; AND
7 (V) IMPAIRS OR IN ANY WAY AFFECTS THE ABILITY OF ANY PERSON
8 TO APPROPRIATE WATER FOR PURPOSES RELATED TO A STREAM
9 RESTORATION PROJECT.
10 (j) A STREAM RESTORATION PROJECT THAT HAS OBTAINED ANY
11 APPLICABLE PERMITS, IS UNDER CONSTRUCTION OR COMPLETED BY
12 AUGUST 1, 2023, AND MEETS THE REQUIREMENTS OF SUBSECTION
13 (9)(b)(IV) OF THIS SECTION DOES NOT CAUSE A MATERIAL INJURY TO ANY
14 VESTED WATER RIGHT AND IS NOT AN UNNECESSARY DAM OR OTHER
15 OBSTRUCTION.
16 **SECTION 3. Safety clause. The general assembly hereby finds,**
17 **determines, and declares that this act is necessary for the immediate**
18 **preservation of the public peace, health, or safety.**