

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

INTRODUCED

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 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

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.

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 SYSTEM WITH DEFORMABLE AND POROUS HARD OR
5 BIOENGINEERED STRUCTURES COMPOSED OF WOOD, ROCK, OR NATURAL
6 MATERIALS THAT RESULT IN ONLY AN INCIDENTAL INCREASE IN SURFACE
7 AREA, NOT TO EXCEED THE ORDINARY HIGH WATER MARK OF THE
8 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 INCIDENTALY 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;

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; DROUGHT
8 RESILIENCE; SOURCE WATER PROTECTION; INFRASTRUCTURE PROTECTION;
9 OR SEDIMENT AND EROSION MANAGEMENT; AND

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

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

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

20 (B) THE HOLDER OF A VESTED WATER RIGHT MAY CHALLENGE THE
21 REBUTTABLE PRESUMPTION BY BRINGING AN ACTION IN THE WATER COURT
22 FOR THE DIVISION IN WHICH THE STREAM RESTORATION PROJECT IS
23 CONDUCTED NO LATER THAN TWO YEARS AFTER THE FILING OF THE
24 COMPLETION REPORT REQUIRED PURSUANT TO SUBSECTION (9)(e) OF THIS
25 SECTION.

26 (II) THE HOLDER OF A VESTED WATER RIGHT MAY REBUT THE
27 REBUTTABLE PRESUMPTION PURSUANT TO SUBSECTION (9)(c)(I)(B) OF

1 THIS SECTION BY PRESENTING EVIDENCE SUFFICIENT TO SHOW THAT THE
2 OPERATION OF A STREAM RESTORATION PROJECT HAS CAUSED MATERIAL
3 INJURY TO THE VESTED WATER RIGHT.

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

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

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

14 (A) THE LOCATION OF THE STREAM RESTORATION PROJECT,
15 INCLUDING THE NAME OF THE STREAM, THE COUNTY WHERE THE STREAM
16 RESTORATION PROJECT IS PROPOSED, AND THE APPROXIMATE ELEVATION
17 OF THE STREAM RESTORATION PROJECT;

18 (B) CONTACT INFORMATION FOR THE OWNER OR PROPONENT OF
19 THE STREAM RESTORATION PROJECT;

20 (C) A DESCRIPTION OF ANY PURPOSES OF THE STREAM
21 RESTORATION PROJECT, AS DESCRIBED IN SUBSECTION (9)(b)(IV)(B) OF
22 THIS SECTION;

23 (D) A PROJECT MAP, DESIGN, AND DESCRIPTION DEMONSTRATING
24 THAT THE STREAM RESTORATION PROJECT IS DESIGNED IN ACCORDANCE
25 WITH THE REQUIREMENTS OF SUBSECTION (9)(b)(IV) OF THIS SECTION;
26 AND

27 (E) A SUMMARY OF ANY OUTREACH REGARDING THE STREAM

1 RESTORATION PROJECT, INCLUDING NOTIFICATION OF THE STREAM
2 RESTORATION PROJECT TO ADJOINING PROPERTY OWNERS, LOCAL FLOOD
3 CONTROL DISTRICTS, THE BASIN ROUNDTABLE CREATED IN SECTION
4 37-75-104 (1)(a) OF THE WATER BASIN WHERE THE STREAM RESTORATION
5 PROJECT IS PROPOSED, OR ANY OTHER POTENTIALLY INTERESTED PERSONS
6 WITH INTERESTS IN THE VICINITY OF THE STREAM RESTORATION PROJECT.

7 (e) UPON THE COMPLETION OF A STREAM RESTORATION PROJECT,
8 THE OWNER OR PROPONENT OF THE STREAM RESTORATION PROJECT SHALL
9 FILE A COMPLETION REPORT WITH THE STATE ENGINEER IN A FORM
10 PRESCRIBED BY THE STATE ENGINEER.

11 (f) 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;

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

17 (III) THE OWNER OR PROPONENT OF THE STREAM RESTORATION
18 PROJECT IS NOT REQUIRED TO COMPLETE THE REGISTRATION AND NOTICE
19 REQUIREMENTS DESCRIBED IN SUBSECTION (9)(d) OF THIS SECTION.

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

26 (h) ON OR BEFORE FEBRUARY 1, 2026, THE STATE ENGINEER SHALL
27 REPORT THE FOLLOWING INFORMATION TO THE AGRICULTURE AND

1 NATURAL RESOURCES COMMITTEE OF THE SENATE AND THE AGRICULTURE,
2 WATER, AND NATURAL RESOURCES COMMITTEE OF THE HOUSE OF
3 REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES:

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

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

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

13 (i) NOTWITHSTANDING ANY PROVISION IN THIS SUBSECTION (9) TO
14 THE CONTRARY, NOTHING IN THIS SUBSECTION (9):

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

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

22 (III) PROHIBITS THE STATE ENGINEER FROM TAKING ANY ACTION
23 NECESSARY TO COMPLY WITH AN INTERSTATE COMPACT, INTERSTATE
24 APPORTIONMENT DECREE, OR INTERSTATE AGREEMENT;

25 (IV) ALTERS, AMENDS, OR AFFECTS ANY FEDERAL, STATE, OR
26 LOCAL LAW OR REQUIREMENT THAT OTHERWISE APPLIES TO A STREAM
27 RESTORATION PROJECT; OR

1 (V) IMPAIRS OR IN ANY WAY AFFECTS THE ABILITY OF ANY PERSON
2 TO APPROPRIATE WATER FOR PURPOSES RELATED TO A STREAM
3 RESTORATION PROJECT.

4 (j) A STREAM RESTORATION PROJECT THAT HAS OBTAINED ANY
5 APPLICABLE PERMITS, IS UNDER CONSTRUCTION OR COMPLETED BY
6 AUGUST 1, 2023, AND MEETS THE REQUIREMENTS OF SUBSECTION
7 (9)(b)(IV) OF THIS SECTION DOES NOT CAUSE MATERIAL INJURY TO ANY
8 VESTED WATER RIGHT AND IS NOT AN UNNECESSARY DAM OR OTHER
9 OBSTRUCTION.

10 **SECTION 3. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety.