

LE: Please
remove double
underlining
before returning
to drafter.

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

DRAFT

**UNEDITED
UNREVISED
REDRAFT
3/17/23**
Double underlining
denotes changes from
prior draft

LLS NO. 23-0640.02 Sarah Lozano x3858

SENATE BILL

SENATE SPONSORSHIP

Roberts,

HOUSE SPONSORSHIP

(None),

BILL TOPIC: Projects To Restore Natural Stream Systems

A BILL FOR AN ACT

101 CONCERNING PROJECTS THAT RESTORE THE ENVIRONMENTAL HEALTH
102 OF NATURAL STREAM SYSTEMS.

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 establishes that stream restoration projects are essential for the protection of public safety, welfare, property, and the environment. It 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.*

LE: Please remove double underlining before returning to drafter.

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining denotes changes from prior draft

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).

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 and declares that:

4 (a) Functioning natural streams are beneficial to all Coloradans
5 because they provide abundant 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) Drought resilience;
- 10 (IV) Flood safety;
- 11 (V) Water quality;
- 12 (VI) Recreation; and
- 13 (VII) Riparian and aquatic habitats;

14 (b) Functioning natural streams that are connected to floodplains
15 balance the patterns of sediment erosion and deposition, which protects
16 water infrastructure, including diversion structures, ditches, pumps, pipes,

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

and reservoirs, that are susceptible to damage and adverse impacts from sedimentation, especially sedimentation resulting from fires and floods;

(c) Most of Colorado's one hundred thousand miles of streams have experienced floodplain alteration due to a diverse range of impacts that render the streams nonfunctional, which has resulted in the reduction or loss of the benefits described in subsection (1)(a) of this section;

(d) Colorado has taken steps to address the long-term detrimental effects of climate change on Colorado's water resources, public lands, wildlife populations, critical infrastructure, and forest health by funding a wide variety of projects that address those effects;

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

(f) 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

(g) 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:

LE: Please
remove double
underlining
before returning
to drafter. 1

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

37-92-602. Exemptions - presumptions - stream restoration

2 **projects - report - legislative declaration - definitions.** (9) (a) THE
3 GENERAL ASSEMBLY HEREBY DECLARES THAT STREAM RESTORATION
4 PROJECTS ARE ESSENTIAL FOR THE PROTECTION OF PUBLIC SAFETY,
5 WELFARE, PROPERTY, AND THE ENVIRONMENT.

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

8 (I) "HISTORICAL" MEANS THE EXTENT OF A NATURAL STREAM
9 SYSTEM BEFORE ALTERATION OF THE NATURAL STREAM SYSTEM BY
10 HUMAN CAUSES OR NATURAL DISASTERS.

11 (II) "HISTORICAL OR EXISTING EXTENT" MEANS THE DELINEATED
12 AND QUANTIFIED HISTORICAL OR EXISTING AREA OF NATURAL STREAM
13 SYSTEM THAT CAN BE DEMONSTRATED BY THE OWNER OR PROPONENT OF
14 A STREAM RESTORATION PROJECT THROUGH METHODS THAT INCLUDE
15 HISTORICAL AERIAL PHOTO REVIEW, REVIEW OF UNITED STATES
16 GEOLOGICAL SURVEY TOPOGRAPHICAL MAPS, FLUVIAL HAZARD ZONE
17 MAPPING, REMOTE SENSING, SOIL SURVEYS, WETLANDS INVENTORY
18 MAPPING, AND OTHER SCIENTIFICALLY-VALID METHODS.

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

21 (A) STABILIZING A NATURAL STREAM SYSTEM WITH HARD OR
22 BIO-ENGINEERED STRUCTURES COMPOSED OF WOOD, ROCK, OR NATURAL
23 MATERIALS WITH THE PRIMARY OBJECTIVE OF STABILIZING THE NATURAL
24 STREAM SYSTEM AND ONLY RESULTING IN AN INCIDENTAL INCREASE IN
25 SURFACE AREA;

26

27 (B) GRADING THE GROUND SURFACE ALONG A NATURAL STREAM

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

1 SYSTEM IN A MANNER THAT DOES NOT RESULT IN GROUNDWATER
2 EXPOSURE, DIVERSIONS OF SURFACE WATER, OR THE COLLECTION OF
3 STORM WATER;
4 (C) INSTALLING STRUCTURES OR RECONSTRUCTING A CHANNEL
5 FOR THE SOLE PURPOSE OF CONTROLLING EROSION ON AN EPHEMERAL
6 NATURAL STREAM;
7 (D) DAYLIGHTING A NATURAL STREAM THAT HAS BEEN PIPED OR
8 BURIED;
9 (E) REMOVING INVASIVE VEGETATION FROM OR PLANTING
10 VEGETATION IN A NATURAL STREAM SYSTEM;
11 (F) BUILDING FENCING TO CONTROL THE MOVEMENT OF ANIMALS
12 WITHIN AND AROUND A NATURAL STREAM SYSTEM; AND
13 (G) INSTALLING STRUCTURES OR RECONSTRUCTING A CHANNEL IN
14 A NATURAL STREAM SYSTEM FOR THE SOLE PURPOSE OF RECOVERY FROM
15 THE IMPACTS OF A WILDLAND FIRE OR FLOOD EMERGENCY.
16 (IV) "NATURAL STREAM" HAS THE MEANING SET FORTH IN
17 SECTION 37-87-102 (1)(b).
18 (V) "NATURAL STREAM SYSTEM" MEANS THE HISTORICAL OR
19 EXISTING EXTENT OF A NATURAL STREAM IN THE STATE, INCLUDING THE
20 GEOMORPHIC FLOODPLAIN AND ASSOCIATED RIPARIAN AREA.
21 (VI) "STREAM RESTORATION PROJECT" MEANS A PROJECT THAT IS
22 DESIGNED AND CONSTRUCTED:
23 (A) WITHIN A NATURAL STREAM SYSTEM; AND
24 (B) FOR THE PURPOSES OF WILDLAND FIRE MITIGATION, FLOOD
25 MITIGATION, BANK STABILIZATION, WATER QUALITY PROTECTION OR
26 RESTORATION, HABITAT OR ECOSYSTEM RESTORATION, DROUGHT
27 RESILIENCE, SOURCE WATER PROTECTION, INFRASTRUCTURE PROTECTION,

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

OR SEDIMENT AND EROSION MANAGEMENT.

(c) (I) EXCEPT AS SET FORTH IN SUBSECTION (9)(e)(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 A COURT OF COMPETENT JURISDICTION.

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

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

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

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

(A) THE LOCATION OF THE STREAM RESTORATION PROJECT;

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

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

1 (C) A DESCRIPTION OF ANY PURPOSES OF THE STREAM
2 RESTORATION PROJECT, AS DESCRIBED IN SUBSECTION (9)(b)(VI)(B) OF
3 THIS SECTION; _____

4 (D) A PROJECT MAP, DESIGN, AND DESCRIPTION DEMONSTRATING
5 THAT THE STREAM RESTORATION PROJECT IS DESIGNED WITHIN THE
6 HISTORICAL OR EXISTING EXTENT OF THE NATURAL STREAM SYSTEM; AND

7 (E) A SUMMARY OF THE OUTREACH REGARDING THE STREAM
8 RESTORATION PROJECT, INCLUDING A DESCRIPTION OF THE BEST EFFORTS
9 MADE TO PROVIDE NOTIFICATION OF THE STREAM RESTORATION PROJECT
10 TO NEIGHBORING WATER RIGHTS OWNERS AND THE BASIN ROUNDTABLE OF
11 THE WATER BASIN WHERE THE STREAM RESTORATION PROJECT IS
12 LOCATED.

13 (e) IF A STREAM RESTORATION PROJECT IS LIMITED TO ONE OR
14 MORE MINOR STREAM RESTORATION ACTIVITIES:

15 (I) THE STREAM RESTORATION PROJECT DOES NOT CAUSE A
16 MATERIAL INJURY TO ANY VESTED WATER RIGHT; _____

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

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

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

LE: Please
remove double
underlining
before returning
to drafter.

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

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

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

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

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

16 (h) NOTWITHSTANDING ANYTHING IN THIS SUBSECTION (9) TO THE
17 CONTRARY, NOTHING IN THIS SUBSECTION (9):

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

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

25 (III) PROHIBITS THE STATE ENGINEER FROM TAKING ANY ACTION
26 NECESSARY TO COMPLY WITH AN INTERSTATE COMPACT, INTERSTATE
27 APPORTIONMENT DECREE, OR INTERSTATE AGREEMENT.

LE: Please
remove double
underlining
before returning
to drafter. 1

UNEDITED
UNREVISED
REDRAFT
3/17/23
Double underlining
denotes changes from
prior draft

SECTION 3. Act subject to petition - effective date -

2 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
3 the expiration of the ninety-day period after final adjournment of the
4 general assembly; except that, if a referendum petition is filed pursuant
5 to section 1 (3) of article V of the state constitution against this act or an
6 item, section, or part of this act within such period, then the act, item,
7 section, or part will not take effect unless approved by the people at the
8 general election to be held in November 2024 and, in such case, will take
9 effect on the date of the official declaration of the vote thereon by the
10 governor.

11 (2) This act applies to stream restoration projects that have
12 commenced on or after the applicable effective date of this act.