

**FINAL
FISCAL NOTE**

Drafting Number: LLS 12-0123

Date: May 17, 2012

Prime Sponsor(s): Rep. Sonnenberg
Sen. Schwartz

Bill Status: Signed into Law

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TITLE: CONCERNING THE AMOUNT OF WATER THAT PERMITTED MINING OPERATIONS THAT CONSTRUCT IMPERMEABLE AREAS THAT ELIMINATE PREEXISTING NATURAL EVAPOTRANSPIRATION ARE REQUIRED TO REPLACE.

Summary of Legislation

This bill specifies that mining operators will not be required to replace the amount of historic natural depletion to stream water that is attributable to preexisting natural evapotranspiration within the mined area. Evapotranspiration is the loss of water from the soil by either evaporation or transpiration from plants. The bill specifies that the burden of proving historic natural depletion lies with the mine operator. Current law requires that the portion of the captured precipitation that historically reached the stream must be replaced to prevent injury to senior water rights and does not give the operator credit for any reduction in evapotranspiration when calculating the obligation to replace stream depletions, unless it is a sand and gravel mine. The bill was signed into law by the Governor on March 15, 2012, and takes effect August 8, 2012, assuming no referendum petition is filed.

Assessment

This bill is assessed at no fiscal impact. As part of the mining permitting process, companies must complete court-approved water augmentation plans that are first reviewed by the Division of Water Resources in the Department of Natural Resources. Determining the impact of the new replacement requirements would be one factor, among many, that the division considers in reviewing augmentation plans and would not impact the division's existing workload.

Many current contested court hearings involving ground water loss already involve plant evaporation and scientific evidence that details the type of plant, weather conditions, and variances in the depth of ground water over time. Therefore, clarifying that such natural depletion does not have to be replaced by mining operators should not result in an increase in the length of trials.

Departments Contacted

Natural Resources

Judicial