



SB18-041

SHORT TITLE: Authorize Water Use Incidental Sand and Gravel Mines

LONG TITLE: Concerning the ability of operators of sand and gravel mines to sue water incidental to sand and gravel mining operations to mitigate the impacts of mining

SPONSORS: [Sen. R. Baumgardner](#) | [Sen. D. Coram](#) | [Rep. J. Arndt](#) | [Rep. L. Saine](#) (Interim bill)

COMMITTEE: Senate Committee – Agriculture, Natural Resources, & Energy

PURPOSE OF THE BILL: To allow water approved in a substitute water supply plan, or a plan of augmentation to offset impacts on exposed groundwater at a sand and gravel mining operation, to be used for mitigation of impacts of mining (such as processing and washing the mined material, temporary irrigation for vegetation to reclaim the land, liner or slurry wall construction, production of concrete and other aggregate-based construction materials, dewatering, and other impacts from mining and dewatering).

PROponents OF THE BILL: Aggregate industry with concurrence of State Engineer's Office

POTENTIAL STAKEHOLDERS: Other water users; State Engineer's Office; Division of Reclamation, Mining & Safety

BACKGROUND: Use of augmentation of water for on-site uses related to the mining of sand and gravel is a long-standing practice including on-site mitigation of impacts. A sand and gravel operation seeks to direct water from its dewatering operation to mitigate off-site impacts to a neighboring well and augment that water use through its substitute water supply plan, which is not currently authorized under the statute.

Is this bill necessary this year? Yes, according to the bill proponents. The State Engineer will not approve a substitute water supply plan calling for use of the water for off-site mitigation absent express statutory authority. This cannot be accomplished absent a change in statute.

How does the bill change current law? The bill would expand the authorized uses of water under an approved augmentation plan or substitute water supply plan.

Does the bill affect the prior appropriations system? Probably not, since the entity must be legally entitled to obtain the water in a substitute water supply plan or augmentation plan.

How is the bill implemented? The State Engineer would require additional information to be presented in a substitute water supply plan or the Water Court for an augmentation plan and verify that information to avoid material injury to other groundwater users before the plan could be approved.

Practical considerations: A sand and gravel operator seeking approval of a substitute water supply plan or augmentation plan would need to determine with some specificity the amount of water necessary to mitigate the off-site impacts (such as a neighbor's well) and the duration of that mitigation. This could require additional engineering work on the part of both the operator and the State Engineer's office. However, according to the legislature's fiscal impact analysis, only these incidental uses would affect

about 10% of the 86 substitute water supply plans reviewed annually; thus, the additional workload on both the Division of Water Resources (State Engineer's office) and the trial courts is anticipated to be minimal.

Fiscal Impact: Fiscal impact statement identifies minimal workload.