

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

DRAFT 12.6.13

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LLS NO. 14-0578.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Sonnenberg and Young, DelGrosso, Foote, Singer

SENATE SPONSORSHIP

Lundberg and Kefalas, Jones, Renfroe

SHORT TITLE: "Relocate Ditch Headgate Without Change Case"

DEADLINES: Finalize by: 09 JAN 2014 File by: 14 JAN 2014

A BILL FOR AN ACT

101 **CONCERNING SIMPLIFIED REQUIREMENTS FOR A CHANGE OF POINT OF**
102 **WATER DIVERSION.**

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://www.leg.state.co.us/billsummaries>.)

Currently, any person may file a statement of opposition to an application for determination of a water matter. The bill allows a water right owner to relocate a ditch headgate that has become inoperable due to a change to the stream without filing for a change of water right if:

- The relocation is not combined with and does not otherwise

- include any other change of water right;
- There is no intervening surface diversion point or inflow between the old point of diversion and the new point of diversion;
- The owner confers with the Colorado water conservation board regarding any potentially affected instream flow right; and
- The owner files a map and statement with the state engineer showing full compliance with these requirements and the state engineer gives the owner written approval of the map and statement.

The approved map and statement creates a rebuttable presumption in any subsequent administrative or judicial proceeding that the relocation complies with these requirements.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 37-86-111 as
3 follows:

4 **37-86-111. Head of ditch may be relocated.** (1) In case the
5 channel of ~~any~~ A natural stream becomes so cut out, lowered, turned
6 aside, or otherwise changed from any cause as to prevent any ditch, canal,
7 or feeder of any reservoir from receiving the proper inflow of water to
8 which it may be entitled from such ~~THE~~ natural stream, the owners of such
9 ~~THE~~ ditch, canal, or feeder have the right to ~~extend~~ RELOCATE the head of
10 ~~such~~ THE ditch, canal, or feeder to such distance ~~up~~ TO the stream ~~which~~
11 THAT supplies ~~the same~~ IT as may be necessary for securing a sufficient
12 flow of water into the ~~same~~ DITCH, CANAL, OR FEEDER. For that purpose
13 they have the same right to maintain proceedings for condemnation of A
14 right-of-way for ~~such extension~~ THE RELOCATION as in THE case of
15 constructing a new ditch. The priority of right to take water from ~~such~~ A
16 stream through such ditch, canal, or feeder ~~as to any such ditch, canal, or~~
17 ~~feeder shall remain~~ REMAINS unaffected in any respect by reason of ~~such~~

1 ~~extension~~ THE RELOCATION; but ~~no such extension shall~~ THE RELOCATION
2 MUST NOT PHYSICALLY interfere with the complete use or enjoyment of
3 any ditch, canal, or feeder.

4 (2) (a) WHEN AN OWNER OF A WATER RIGHT WISHES TO RELOCATE
5 A SURFACE DIVERSION STRUCTURE TO A NEW SURFACE POINT OF
6 DIVERSION PURSUANT TO SUBSECTION (1) OF THIS SECTION, THE OWNER
7 DOES NOT NEED TO FILE A CHANGE OF WATER RIGHT APPLICATION FOR THE
8 NEW SURFACE POINT OF DIVERSION IF:

9 (I) (A) THE RELOCATION IS NOT COMBINED WITH AND DOES NOT
10 OTHERWISE INCLUDE ANY OTHER CHANGE OF WATER RIGHT, AS THAT TERM
11 IS DEFINED IN SECTION 37-92-103 (5);

12 (B) THERE IS NO INTERVENING SURFACE DIVERSION POINT OR
13 INFLOW, AS THAT TERM IS DEFINED IN SECTION 37-92-305 (3.5) (a) (I),
14 BETWEEN THE OLD POINT OF DIVERSION AND THE NEW POINT OF
15 DIVERSION; AND

16 (C) THE OWNER HAS CONFERRED WITH THE COLORADO WATER
17 CONSERVATION BOARD REGARDING ANY POTENTIALLY AFFECTED
18 INSTREAM FLOW RIGHT IN THE SUBJECT STREAM REACH AND CONFIRMED
19 THAT NO INJURY WILL RESULT FROM THE CHANGE; AND

20 (II) PURSUANT TO GUIDANCE ISSUED BY THE STATE ENGINEER, THE
21 OWNER FILES A MAP AND STATEMENT WITH THE STATE ENGINEER SHOWING
22 FULL COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (1) OF THIS
23 SECTION AND SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AND THE STATE
24 ENGINEER GIVES THE OWNER WRITTEN APPROVAL OF THE MAP AND
25 STATEMENT.

26 (b) WHEN THE STATE ENGINEER APPROVES A MAP AND STATEMENT
27 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION

1 (2), THE RELOCATION OF THE HEAD OF A DITCH, CANAL, OR FEEDER IS
2 REBUTTABLY PRESUMED IN ANY SUBSEQUENT ADMINISTRATIVE OR
3 JUDICIAL PROCEEDING TO BE IN FULL COMPLIANCE WITH THIS SECTION.

4 (3) NOTHING IN THIS SECTION AUTHORIZES ANY TRESPASS ON
5 PRIVATE PROPERTY OR THE TAKING OF PRIVATE PROPERTY OF OTHERS
6 WITHOUT THEIR CONSENT OR WITHOUT JUST COMPENSATION ACCORDING
7 TO PROCEDURES PRESCRIBED BY LAW.

8 **SECTION 2.** In Colorado Revised Statutes, 37-92-103, **amend**
9 (5) as follows:

10 **37-92-103. Definitions.** As used in this article, unless the context
11 otherwise requires:

12 (5) "Change of water right" means a change in the type, place, or
13 time of use, a change in the point of diversion EXCEPT AS SPECIFIED IN
14 SECTION 37-86-111 (2), a change from a fixed point of diversion to
15 alternate or supplemental points of diversion, a change from alternate or
16 supplemental points of diversion to a fixed point of diversion, a change
17 in the means of diversion, a change in the place of storage, a change from
18 direct application to storage and subsequent application, a change from
19 storage and subsequent application to direct application, a change from
20 a fixed place of storage to alternate places of storage, a change from
21 alternate places of storage to a fixed place of storage, or any combination
22 of such changes. The term "change of water right" includes changes of
23 conditional water rights as well as changes of water rights.

24 **SECTION 3. Applicability.** This act applies to changes in points
25 of diversion made, and to applications filed, on or after the effective date
26 of this act.

27 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.

