

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0472.01 Thomas Morris x4218

SENATE BILL 14-023

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING AN AUTHORIZATION OF THE VOLUNTARY TRANSFER OF
102 WATER EFFICIENCY SAVINGS TO THE COLORADO WATER
103 CONSERVATION BOARD FOR INSTREAM USE PURPOSES IN WATER
104 DIVISIONS THAT INCLUDE LANDS WEST OF THE CONTINENTAL
105 DIVIDE.

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/bills summaries>.)

Section 1 of the bill defines "water efficiency savings" as that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

portion of a water right used solely for agricultural irrigation or stock watering purposes in water division 4, 5, 6, or 7 that is nonconsumptive under existing practices and that results from efficiency measures, determined as the difference between:

- ! The lesser of the decreed diversion amount and the maximum amount that had been historically diverted using the existing facilities for a beneficial use under reasonably efficient practices to accomplish without waste the purpose for which the appropriation was lawfully made; and
- ! The diverted amount needed to meet the decreed beneficial use after increased efficiency in the means of diversion, conveyance, storage, application, or use.

Section 2 allows water efficiency savings to be changed or loaned, pursuant to existing water court and water loan statutes, only to the Colorado water conservation board, only for instream use, and only if:

- ! The application was filed within 2 years after the diversions were decreased due to efficiency measures;
- ! The change or loan will not materially injure decreed water rights; and
- ! The change or loan will not adversely affect Colorado's interstate compact entitlements or obligations.

The change decree or loan approval must identify the amount of water efficiency savings and the stream reaches within which water efficiency savings, as changed or loaned, will be used. Water efficiency savings that have been changed or loaned are not subject to abandonment. The parties who enter into a change or loan of water efficiency savings may provide conditions by which the original decreed diversion rate may be preserved for a future use by the water right owner who implements the efficiency measures if use of the efficiency measures is discontinued.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-103, **add**
3 (11.5) as follows:

4 **37-92-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (11.5) (a) "WATER EFFICIENCY SAVINGS" MEANS THAT PORTION OF
7 A WATER RIGHT USED SOLELY FOR AGRICULTURAL IRRIGATION OR STOCK
8 WATERING PURPOSES IN WATER DIVISION 4, 5, 6, OR 7 THAT IS

1 NONCONSUMPTIVE UNDER EXISTING PRACTICES AND THAT RESULTS FROM
2 EFFICIENCY MEASURES, DETERMINED AS THE DIFFERENCE BETWEEN:

3 (I) THE LESSER OF THE DECREED DIVERSION AMOUNT AND THE
4 MAXIMUM AMOUNT THAT HAD BEEN HISTORICALLY DIVERTED USING THE
5 EXISTING FACILITIES FOR A BENEFICIAL USE UNDER REASONABLY
6 EFFICIENT PRACTICES TO ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR
7 WHICH THE APPROPRIATION WAS LAWFULLY MADE; AND

8 (II) THE DIVERTED AMOUNT NEEDED TO MEET THE DECREED
9 BENEFICIAL USE AFTER INCREASED EFFICIENCY IN THE MEANS OF
10 DIVERSION, CONVEYANCE, STORAGE, APPLICATION, OR USE.

11 (b) FOR THE PURPOSES OF THIS SUBSECTION (11.5), "WATER
12 EFFICIENCY SAVINGS" DOES NOT INCLUDE WATER DERIVED FROM THE
13 SALVAGE OF TRIBUTARY WATERS BY THE ERADICATION OF
14 PHREATOPHYTES.

15 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.3)
16 as follows:

17 **37-92-305. Standards with respect to rulings of the referee and**
18 **decisions of the water judge.** (3.3) (a) WATER EFFICIENCY SAVINGS ARE
19 AN INTEREST IN WATER THAT CAN BE ACQUIRED, SOLD, LEASED,
20 TRANSFERRED, LOANED, OR OTHERWISE DEvised IN WATER DIVISION 4, 5,
21 6, OR 7 SUBJECT TO THE REQUIREMENTS APPLICABLE TO A CHANGE OR
22 LOAN OF WATER RIGHT AND THE FOLLOWING STANDARDS AND
23 LIMITATIONS:

24 (I) THE APPLICABLE DIVISION ENGINEER OR WATER JUDGE MAY
25 APPROVE A CHANGE OR LOAN OF WATER RIGHT FOR WATER EFFICIENCY
26 SAVINGS ONLY IF:

27 (A) THE APPLICATION WAS FILED WITHIN TWO YEARS AFTER THE

1 DIVERSIONS WERE DECREASED DUE TO EFFICIENCY MEASURES;

2 (B) THE CHANGE OR LOAN WILL NOT MATERIALLY INJURE DECREED
3 WATER RIGHTS, INCLUDING MAINTENANCE OF RETURN FLOWS IN TIME,
4 PLACE, AND AMOUNT AS NECESSARY TO AVOID SUCH INJURY; AND

5 (C) THE CHANGE OR LOAN WILL NOT ADVERSELY AFFECT
6 COLORADO'S ENTITLEMENTS OR OBLIGATIONS UNDER INTERSTATE
7 COMPACTS OR UNITED STATES SUPREME COURT EQUITABLE
8 APPORTIONMENT DECREES;

9 (II) WATER EFFICIENCY SAVINGS MAY BE CHANGED OR LOANED
10 ONLY FOR THE FOLLOWING NONCONSUMPTIVE USES BETWEEN THE POINT
11 OF DIVERSION BEFORE THE CHANGE OR LOAN AND NO FARTHER THAN THE
12 LOWEST POINT OF RETURN FLOW BEFORE THE CHANGE OR LOAN:

13 (A) AN INSTREAM FLOW TO BE ACQUIRED BY THE COLORADO
14 WATER CONSERVATION BOARD PURSUANT TO SECTION 37-92-102 (3); OR

15 (B) A LOAN TO THE COLORADO WATER CONSERVATION BOARD FOR
16 USE AS INSTREAM FLOWS PURSUANT TO SECTION 37-83-105 (2) IN
17 CONNECTION WITH A DECREED INSTREAM FLOW WATER RIGHT HELD BY
18 THE BOARD PURSUANT TO SECTION 37-92-102 (3); AND

19 (III) THE CHANGE DECREE OR LOAN APPROVAL MUST IDENTIFY THE
20 AMOUNT OF WATER EFFICIENCY SAVINGS AND THE STREAM REACHES
21 WITHIN WHICH WATER EFFICIENCY SAVINGS, AS CHANGED OR LOANED,
22 WILL BE USED.

23 (b) WATER EFFICIENCY SAVINGS THAT HAVE BEEN CHANGED OR
24 LOANED PURSUANT TO THIS SUBSECTION (3.3) ARE NOT SUBJECT TO
25 ABANDONMENT.

26 (c) THE PARTIES THAT ENTER INTO A CHANGE OR LOAN OF WATER
27 EFFICIENCY SAVINGS MAY PROVIDE, BY CONTRACT OR OTHER AGREEMENT,

1 CONDITIONS BY WHICH THE ORIGINAL DECREED DIVERSION RATE MAY BE
2 PRESERVED FOR A FUTURE USE BY THE WATER RIGHT OWNER WHO
3 IMPLEMENTS THE EFFICIENCY MEASURES IF USE OF THE EFFICIENCY
4 MEASURES IS DISCONTINUED.

5 **SECTION 3. Applicability.** This act applies to water efficiency
6 savings changed or loaned on or after the effective date of this act.

7 **SECTION 4. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.