

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 07-0257.01 Thomas Morris

HOUSE BILL 07-1124

HOUSE SPONSORSHIP

Hodge,

SENATE SPONSORSHIP

(None),

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING RESERVOIR OPERATING RULES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Establishes statewide reservoir operating rules. Defines "storage year" for accounting purposes and limits reservoirs to one fill per adjudicated priority per storage year. Requires water remaining in storage at the end of a storage year to be counted against the succeeding year's fill. Requires reservoir owners to keep detailed operating records. Requires reservoirs to divert water when it is physically and legally available and can safely be stored or have an equivalent volume of water count against that year's fill. Encourages upstream out-of-priority storage to maximize the use of state waters. Gives the state engineer rule-making

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.*

authority over out-of-priority storage.

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

2 **SECTION 1.** 37-87-101, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **37-87-101. Storage of water - operational rules.** (3) THE
5 FOLLOWING GENERAL OPERATIONAL RULES APPLY TO ALL PERSONS
6 DIVERTING WATER TO STORAGE:

7 (a) "STORAGE YEAR" MEANS THE PERIOD FROM NOVEMBER 1 OF
8 ONE YEAR TO OCTOBER 31 OF THE SUCCEEDING YEAR.

9 (b) DIVERSIONS TO STORAGE ARE LIMITED TO ONE COMPLETE FILL
10 PER ADJUDICATED PRIORITY PER STORAGE YEAR.

11 (c) THE DIVISION ENGINEER SHALL COUNT ALL WATER REMAINING
12 IN STORAGE AT A STORAGE FACILITY AT THE END OF A STORAGE YEAR
13 TOWARD THE FOLLOWING YEAR'S FILL OF THE MOST SENIOR PRIORITY
14 UNDER WHICH WATER IS DIVERTED TO STORAGE AT THAT STORAGE
15 FACILITY.

16 (d) (I) ALL PERSONS DIVERTING WATER TO STORAGE SHALL
17 MEASURE AND KEEP COMPLETE RECORDS OF THE AMOUNT OF WATER:

18 (A) DIVERTED TO STORAGE DAILY, MONTHLY, AND ANNUALLY FOR
19 EACH SEPARATE PRIORITY THAT DELIVERS WATER TO THE STORAGE
20 FACILITY; AND

21 (B) DELIVERED FROM STORAGE DAILY, MONTHLY, AND ANNUALLY
22 FOR BENEFICIAL USES IN OTHER LOCATIONS.

23 (II) ALL PERSONS DIVERTING WATER TO STORAGE SHALL SUBMIT
24 THE RECORDS REQUIRED BY THIS PARAGRAPH (d) TO THE DIVISION
25 ENGINEER ON A MONTHLY BASIS IN AN ELECTRONIC FORMAT ACCEPTABLE

1 TO THE DIVISION ENGINEER.

2 (e) (I) WHEN A DIVISION ENGINEER RECOGNIZES A CALL BY THE
3 OWNER OR OPERATOR OF A STORAGE RIGHT WITHIN A DIVISION, THE
4 DIVISION ENGINEER SHALL REQUIRE EACH STORAGE RIGHT OWNER OR
5 OPERATOR IN THE SAME DIVISION TO DIVERT WATER FROM THE RIVER INTO
6 STORAGE TO THE FULL EXTENT WATER IS PHYSICALLY AND LEGALLY
7 AVAILABLE FOR DIVERSION TO EACH STORAGE FACILITY AND CAN BE
8 SAFELY DIVERTED AND STORED. IF THE OWNER OR OPERATOR OF A
9 STORAGE RIGHT FAILS TO DIVERT WATER, THE DIVISION ENGINEER SHALL
10 ASSUME THAT THE STORAGE RIGHT OWNER OR OPERATOR HAS
11 INTENTIONALLY FORGONE THE OPPORTUNITY TO DIVERT WATER AND
12 SHALL COUNT AN AMOUNT EQUAL TO THAT AVAILABLE FOR DIVERSION
13 AGAINST THE PRIORITY THAT COULD HAVE DIVERTED IT.

14 (II) THE DIVISION ENGINEER SHALL COUNT SUCH DIVERSIONS AND
15 FOREGONE DIVERSIONS AGAINST THE MOST SENIOR UNSATISFIED PRIORITY
16 THAT DELIVERS WATER TO EACH STORAGE FACILITY.

17 (III) TO FACILITATE THE IMPLEMENTATION OF THIS PARAGRAPH
18 (e), THE STATE ENGINEER SHALL DETERMINE SAFE STORAGE LEVELS FOR
19 EACH MONTH OF THE STORAGE YEAR FOR EACH STORAGE FACILITY.

20 (f) UPSTREAM OUT-OF-PRIORITY STORAGE AUTHORIZED BY
21 SECTION 37-80-120 (1) IS ENCOURAGED TO MAXIMIZE THE USE OF THE
22 STATE'S WATERS; EXCEPT THAT ALL SUCH OUT-OF-PRIORITY STORAGE
23 SHALL BE MADE ONLY PURSUANT TO SECTION 37-80-120 (1) AND RULES
24 PROMULGATED BY THE STATE ENGINEER PURSUANT TO SECTION 37-80-120
25 (1).

26 **SECTION 2.** 37-80-120 (1), Colorado Revised Statutes, is
27 amended to read:

1 **37-80-120. Upstream storage - rules - substitute supply -**
2 **historic natural depletion.** (1) (a) In every case in which the state
3 engineer finds that water can be stored out of priority IN AN
4 ABOVE-GROUND OR CONJUNCTIVE USE STORAGE FACILITY OR AREA under
5 circumstances such that the water so stored can be promptly made
6 available to downstream senior storage appropriators in case they are
7 unable to completely store their entire appropriative right due to
8 insufficient water supply, the state engineer may permit such upstream
9 storage out of priority, but such storage water shall be promptly released
10 on demand of a downstream senior whenever needed by such senior for
11 actual use.

12 (b) THE STATE ENGINEER MAY PERMIT UPSTREAM STORAGE
13 FACILITIES THAT CANNOT RELEASE WATER DIRECTLY TO THE RIVER TO
14 STORE WATER OUT OF PRIORITY UNDER THIS SUBSECTION (1) IF THE PARTY
15 SEEKING TO DIVERT OUT OF PRIORITY DEMONSTRATES AN ABILITY TO
16 DELIVER A SUITABLE REPLACEMENT SUPPLY AT OR ABOVE THE AFFECTED
17 DOWNSTREAM STORAGE FACILITY WHENEVER NEEDED FOR ACTUAL USE.

18 (c) (I) WHEN UPSTREAM OUT-OF-PRIORITY STORAGE OCCURS:
19 (A) THE DIVISION ENGINEER SHALL COUNT THE AMOUNT DIVERTED
20 UPSTREAM AGAINST THE MOST SENIOR UNSATISFIED PRIORITY THAT
21 DELIVERS WATER TO THE AFFECTED DOWNSTREAM STORAGE FACILITY AND
22 ADJUST THE CALL ACCORDINGLY;

23 (B) THE AFFECTED DOWNSTREAM STORAGE FACILITY MAY
24 CONTINUE TO DIVERT WATER INTO STORAGE SO LONG AS THERE IS NOT A
25 DOWNSTREAM CALL SENIOR TO THE PRIORITY OF THE UPSTREAM STORAGE
26 FACILITY THAT STORED WATER OUT OF PRIORITY.

27 (II) IF THE AFFECTED DOWNSTREAM STORAGE FACILITY FAILS TO

1 FULFILL ITS PRIORITY PRIOR TO THE TIME WATER IS NEEDED FOR ACTUAL
2 USE, IT SHALL BE ENTITLED TO THE DELIVERY OF WATER FROM THE
3 UPSTREAM STORAGE FACILITY STORING OUT OF PRIORITY, BUT SHALL NOT
4 BE ENTITLED TO PLACE A CALL TO FILL THE SHORTAGE CAUSED BY THE
5 UPSTREAM OUT-OF-PRIORITY DIVERSIONS.

6 (d) THE STATE ENGINEER MAY PROMULGATE RULES TO IMPLEMENT
7 THIS SUBSECTION (1).

8 **SECTION 3. Effective date - applicability.** (1) This act shall
9 take effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly that is
11 allowed for submitting a referendum petition pursuant to article V,
12 section 1 (3) of the state constitution, (August 8, 2007, if adjournment
13 sine die is on May 9, 2007); except that, if a referendum petition is filed
14 against this act or an item, section, or part of this act within such period,
15 then the act, item, section, or part, if approved by the people, shall take
16 effect on the date of the official declaration of the vote thereon by
17 proclamation of the governor.

18 (2) The provisions of this act shall apply to water diverted for or
19 released from storage on or after the applicable effective date of this act.