

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

INTRODUCED

LLS NO. 09-0389.01 Thomas Morris

HOUSE BILL 09-1233

HOUSE SPONSORSHIP

Vigil,

SENATE SPONSORSHIP

(None),

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RECOGNITION OF ACEQUIAS, AND, IN CONNECTION**
102 **THEREWITH, AUTHORIZING ACEQUIA WATER DISTRICTS.**

Bill Summary

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

Allows the creation of acequia conservancy districts, acequia conservancy subdistricts, acequia water conservancy districts, and acequia water conservancy subdistricts. Allows an existing conservancy district or water conservancy district or subdistrict to convert to an acequia conservancy district or an acequia water conservancy district or subdistrict, respectively. Specifies the eligibility and other requirements for the creation and conversion of such districts. Allows such a district

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.

to:

- ! Hold its elections pursuant to a one landowner-one vote system;
- ! Require owners of land irrigated by an acequia within the district to contribute labor to the maintenance and repair of the district's acequias or, in the alternative, to pay an assessment in lieu of such labor; and
- ! Hold a right of first refusal regarding the sale, lease, or exchange of any surface water right that has historically been used by the acequia to irrigate long-lot land within the district.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that:

4 (a) The first nonnative Americans to settle in Colorado were
5 Hispanics from colonial Mexico, who brought with them their ancient
6 irrigation practices based on a community ditch called an "acequia",
7 pursuant to which water was treated as a community resource and
8 allocated based upon equity and need rather than priority of
9 appropriation;

10 (b) Colorado's territorial session laws from 1868, 1872, and 1874
11 recognized the validity of acequias within the counties of Costilla,
12 Conejos, Huerfano, and Las Animas, including the requirement for
13 irrigators to contribute labor to the upkeep of the acequia and a preference
14 over other diversions for acequias' diversions regardless of priority;

15 (c) As the general assembly recognized in the following excerpt
16 from Senate Joint Resolution 02-028, the continued operation of these
17 historic acequias is an "essential foundation for the sustenance of the
18 local economy":

19 "WHEREAS, Spanish American settlers founded the

1 Town of San Luis in the Culebra Valley in 1852, thus
2 making it the oldest town in Colorado; and

3 "WHEREAS, In keeping with their ancestors'
4 acequias tradition, these settlers quickly initiated an
5 irrigation system; and

6 "WHEREAS, The oldest water right in Colorado is
7 attributed to the San Luis People's Ditch, with a priority
8 date of April 10, 1852, in the amount of 21 cubic feet per
9 second from Culebra Creek in Costilla County; and

10 "WHEREAS, Originally, the land adjacent to the
11 Ditch was divided into strips approximately 100 yards wide
12 and 16 to 20 miles long, allowing settlers to have irrigated
13 farmland near the Ditch and also to have access to range
14 and timber land, and today, the Ditch is 4 miles long and
15 irrigates 1,600 acres of farmland; and

16 "WHEREAS, The San Luis People's Ditch has been
17 continuously operated for irrigation purposes for 150 years,
18 thus making it an essential foundation for the sustenance of
19 the local economy; . . ."

20 (d) Upon adoption of Colorado's constitution, the prior
21 appropriation system became the law governing water allocation; and

22 (e) The prior appropriation system is, in fundamental ways,
23 inconsistent with the community-based principles upon which acequias
24 were founded.

25 (2) The general assembly hereby determines that:

26 (a) Notwithstanding the constitutional establishment of the prior
27 appropriation system, communities that were historically served by an

1 acequia have used informal methods to continue to allocate water based
2 upon equity in addition to priority and to treat water as a community
3 resource; and

4 (b) Recognition by the general assembly of the continuing
5 existence and use of acequias, while continuing to comply with the
6 constitutional requirements of priority administration of tributary water,
7 is critical to preserving the historic value that acequias provide to the
8 communities in which they are located.

9 (3) The general assembly hereby declares that the purpose of this
10 act is to promote and encourage the continued operation of acequias and
11 the viability of the historic communities that depend on those acequias.

12 **SECTION 2.** Article 2 of title 37, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF A NEW SECTION to read:

14 **37-2-107. Acequia conservancy district - subdistrict - creation**
15 **- conversion - definition.** (1) FOR PURPOSES OF THIS SECTION:

16 (a) "ACEQUIA" MEANS A COMMUNITY DITCH THAT:

17 (I) ORIGINATED IN SPANISH LAW AND LAND GRANTS PRIOR TO
18 COLORADO'S STATEHOOD;

19 (II) HAS HISTORICALLY TREATED WATER AS A COMMUNITY
20 RESOURCE AND HAS THEREFORE ATTEMPTED TO ALLOCATE WATER BASED
21 UPON EQUITY IN ADDITION TO PRIORITY;

22 (III) RELIES ESSENTIALLY ON GRAVITY-FED SURFACE WATER
23 DIVERSIONS;

24 (IV) SUPPLIES IRRIGATION WATER TO LONG LOTS THAT ARE
25 PERPENDICULAR TO THE STREAM OR DITCH TO MAXIMIZE THE NUMBER OF
26 LANDOWNERS WHO HAVE ACCESS TO WATER;

27 (V) HAS HISTORICALLY BEEN ORGANIZED PURSUANT TO A ONE

1 LANDOWNER-ONE VOTE SYSTEM; AND

2 (VI) HAS HISTORICALLY RELIED ON LABOR SUPPLIED BY THE
3 OWNERS OF IRRIGATED LAND WITHIN THE ACEQUIA COMMUNITY.

4 (b) SUBJECT TO ANY CONTRARY PROVISION OF SUBSECTION (2) OF
5 THIS SECTION, THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF
6 THIS ARTICLE OTHER THAN THIS SECTION THAT APPLY TO THE CREATION
7 OF A CONSERVANCY DISTRICT SHALL BE DEEMED TO APPLY TO THE
8 CREATION OF AN ACEQUIA CONSERVANCY DISTRICT, THE CREATION OF AN
9 ACEQUIA CONSERVANCY SUBDISTRICT, OR THE CONVERSION OF A
10 CONSERVANCY DISTRICT TO AN ACEQUIA CONSERVANCY DISTRICT, AS
11 APPROPRIATE. AN ACEQUIA CONSERVANCY SUBDISTRICT SHALL BE
12 GOVERNED BY ARTICLES 1 TO 8 OF THIS TITLE IN ALL RESPECTS AS WOULD
13 AN ACEQUIA CONSERVANCY DISTRICT.

14 (2) AN ACEQUIA CONSERVANCY DISTRICT OR ACEQUIA
15 CONSERVANCY SUBDISTRICT MAY BE ORGANIZED PURSUANT TO THIS
16 ARTICLE AND A CONSERVANCY DISTRICT ORGANIZED PURSUANT TO THIS
17 ARTICLE MAY CONVERT TO AN ACEQUIA CONSERVANCY DISTRICT IF:

18 (a) AT LEAST TWO-THIRDS OF THE IRRIGATED LAND IN THE
19 DISTRICT OR SUBDISTRICT IS PLATTED OR ORGANIZED INTO LONG LOTS, THE
20 LONGEST AXES OF WHICH ARE PERPENDICULAR TO THE STREAM OR DITCH
21 TO MAXIMIZE THE NUMBER OF LANDOWNERS WHO HAVE ACCESS TO
22 WATER;

23 (b) ALL OF THE IRRIGATED LAND IN THE DISTRICT OR SUBDISTRICT
24 HAS HISTORICALLY BEEN SERVED BY AN ACEQUIA;

25 (c) SURFACE WATER RIGHTS PROVIDE ALL OF THE WATER RIGHTS
26 USED FOR IRRIGATION IN THE DISTRICT OR SUBDISTRICT, AND SUCH WATER
27 RIGHTS HAVE HAD SUBSTANTIALLY UNINTERRUPTED USE SINCE BEFORE

1 COLORADO'S STATEHOOD;

2 (d) THE DISTRICT OR SUBDISTRICT IS LOCATED WHOLLY IN ONE OR
3 MORE OF THE COUNTIES OF COSTILLA, CONEJOS, HUERFANO, AND LAS
4 ANIMAS;

5 (e) A PETITION REQUESTING THE CREATION OR CONVERSION IS
6 FILED WITH THE DISTRICT COURT AND THE PETITION HAS BEEN SIGNED BY
7 EITHER:

8 (I) A MAJORITY OF THE OWNERS OF IRRIGATED LAND WITHIN THE
9 DISTRICT OR SUBDISTRICT OR TWO HUNDRED OF SUCH OWNERS,
10 WHICHEVER IS LESS; OR

11 (II) A MAJORITY OF THE BOARD OF DIRECTORS OF THE DISTRICT;

12 (f) THE DISTRICT COURT PUBLISHES NOTICE OF A HEARING ON THE
13 PETITION PURSUANT TO THE PROCEDURES SPECIFIED IN SECTION 37-2-104;

14 (g) THE DISTRICT COURT HOLDS A HEARING ON THE PETITION AND
15 ANY PROTESTING PETITION FILED PURSUANT TO THE PROCEDURES
16 SPECIFIED IN SECTION 37-2-105; AND

17 (h) THE DISTRICT COURT FINDS THAT THE REQUIREMENTS OF THIS
18 SUBSECTION (2) AND SECTION 37-2-105 HAVE BEEN MET, IN WHICH CASE
19 THE CLERK OF COURT SHALL DISTRIBUTE A DECREE OF INCORPORATION OR
20 CONVERSION PURSUANT TO THE PROCEDURES SPECIFIED IN SECTION
21 37-2-106.

22 (3) IF THE ORGANIZING OR CONVERSION PETITION SO PROVIDES, AN
23 ACEQUIA CONSERVANCY DISTRICT OR SUBDISTRICT:

24 (a) MAY BE KNOWN AS THE "___ ACEQUIA CONSERVANCY
25 DISTRICT" OR THE "___ ACEQUIA CONSERVANCY SUBDISTRICT";

26 (b) MAY HOLD ITS ELECTIONS PURSUANT TO A ONE
27 LANDOWNER-ONE VOTE SYSTEM;

1 (c) MAY REQUIRE OWNERS OF LAND IRRIGATED BY AN ACEQUIA
2 WITHIN THE DISTRICT OR SUBDISTRICT TO CONTRIBUTE LABOR TO THE
3 MAINTENANCE AND REPAIR OF THE DISTRICT'S OR SUBDISTRICT'S ACEQUIAS
4 OR, IN THE ALTERNATIVE, TO PAY AN ASSESSMENT IN LIEU OF SUCH LABOR;
5 AND

6 (d) MAY HAVE A RIGHT OF FIRST REFUSAL REGARDING THE SALE,
7 LEASE, OR EXCHANGE OF ANY SURFACE WATER RIGHT THAT HAS
8 HISTORICALLY BEEN USED BY THE ACEQUIA TO IRRIGATE LONG-LOT LAND
9 WITHIN THE DISTRICT OR SUBDISTRICT. THE BOARD SHALL OFFSET THE
10 VALUE OF SUCH RIGHT OF FIRST REFUSAL FROM ANY ASSESSMENT LEVIED
11 PURSUANT TO ARTICLE 5 OF THIS TITLE.

12 **SECTION 3.** Article 45 of title 37, Colorado Revised Statutes, is
13 amended BY THE ADDITION OF A NEW SECTION to read:

14 **37-45-154. Acequia water conservancy district - subdistrict -**
15 **creation - conversion - definition.** (1) FOR PURPOSES OF THIS SECTION:

16 (a) "ACEQUIA" MEANS A COMMUNITY DITCH THAT:

17 (I) ORIGINATED IN SPANISH LAW AND LAND GRANTS PRIOR TO
18 COLORADO'S STATEHOOD;

19 (II) HAS HISTORICALLY TREATED WATER AS A COMMUNITY
20 RESOURCE AND HAS THEREFORE ATTEMPTED TO ALLOCATE WATER BASED
21 UPON EQUITY IN ADDITION TO PRIORITY;

22 (III) RELIES ESSENTIALLY ON GRAVITY-FED SURFACE WATER
23 DIVERSIONS;

24 (IV) SUPPLIES IRRIGATION WATER TO LONG LOTS THAT ARE
25 PERPENDICULAR TO THE STREAM OR DITCH TO MAXIMIZE THE NUMBER OF
26 LANDOWNERS WHO HAVE ACCESS TO WATER;

27 (V) HAS HISTORICALLY BEEN ORGANIZED PURSUANT TO A ONE

1 LANDOWNER-ONE VOTE SYSTEM; AND

2 (VI) HAS HISTORICALLY RELIED ON LABOR SUPPLIED BY THE
3 OWNERS OF IRRIGATED LAND WITHIN THE ACEQUIA COMMUNITY.

4 (b) SUBJECT TO ANY CONTRARY PROVISION OF SUBSECTION (2) OF
5 THIS SECTION, THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF
6 THIS ARTICLE OTHER THAN THIS SECTION THAT APPLY TO THE CREATION
7 OF A WATER CONSERVANCY DISTRICT OR A SUBDISTRICT SHALL BE DEEMED
8 TO APPLY TO THE CREATION OF AN ACEQUIA WATER CONSERVANCY
9 DISTRICT OR AN ACEQUIA SUBDISTRICT OR THE CONVERSION OF A WATER
10 CONSERVANCY DISTRICT OR A SUBDISTRICT TO AN ACEQUIA WATER
11 CONSERVANCY DISTRICT OR AN ACEQUIA SUBDISTRICT, AS APPROPRIATE.

12 (2) AN ACEQUIA WATER CONSERVANCY DISTRICT OR AN ACEQUIA
13 SUBDISTRICT MAY BE ORGANIZED PURSUANT TO THIS ARTICLE AND A
14 WATER CONSERVANCY DISTRICT OR A SUBDISTRICT ORGANIZED PURSUANT
15 TO THIS ARTICLE MAY CONVERT TO AN ACEQUIA WATER CONSERVANCY
16 DISTRICT OR AN ACEQUIA SUBDISTRICT IF:

17 (a) AT LEAST TWO-THIRDS OF THE IRRIGATED LAND IN THE
18 DISTRICT OR SUBDISTRICT IS PLATTED OR ORGANIZED INTO LONG LOTS, THE
19 LONGEST AXES OF WHICH ARE PERPENDICULAR TO THE STREAM OR DITCH
20 TO MAXIMIZE THE NUMBER OF LANDOWNERS WHO HAVE ACCESS TO
21 WATER;

22 (b) ALL OF THE IRRIGATED LAND IN THE DISTRICT OR SUBDISTRICT
23 HAS HISTORICALLY BEEN SERVED BY AN ACEQUIA;

24 (c) SURFACE WATER RIGHTS PROVIDE ALL OF THE WATER RIGHTS
25 USED FOR IRRIGATION IN THE DISTRICT OR SUBDISTRICT, AND SUCH WATER
26 RIGHTS HAVE HAD SUBSTANTIALLY UNINTERRUPTED USE SINCE BEFORE
27 COLORADO'S STATEHOOD;

1 (d) THE DISTRICT OR SUBDISTRICT IS LOCATED WHOLLY IN ONE OR
2 MORE OF THE COUNTIES OF COSTILLA, CONEJOS, HUERFANO, AND LAS
3 ANIMAS;

4 (e) A PETITION REQUESTING THE CREATION OR CONVERSION IS
5 FILED WITH THE DISTRICT COURT AND THE PETITION HAS BEEN SIGNED BY
6 EITHER:

7 (I) A MAJORITY OF THE OWNERS OF IRRIGATED LAND WITHIN THE
8 DISTRICT OR SUBDISTRICT OR TWO HUNDRED OF SUCH OWNERS,
9 WHICHEVER IS LESS; OR

10 (II) A MAJORITY OF THE BOARD;

11 (f) THE DISTRICT COURT PUBLISHES NOTICE OF A HEARING ON THE
12 PETITION PURSUANT TO THE PROCEDURES SPECIFIED IN SECTION
13 37-45-111;

14 (g) THE DISTRICT COURT HOLDS A HEARING ON THE PETITION AND
15 ANY PROTESTING PETITION FILED PURSUANT TO THE PROCEDURES
16 SPECIFIED IN SECTIONS 37-45-112 AND 37-45-120, IF APPLICABLE; AND

17 (h) THE DISTRICT COURT FINDS THAT THE REQUIREMENTS OF THIS
18 SUBSECTION (2) AND SECTIONS 37-45-112 AND 37-45-120, IF APPLICABLE,
19 HAVE BEEN MET, IN WHICH CASE THE CLERK OF COURT SHALL DISTRIBUTE
20 A DECREE OF INCORPORATION OR CONVERSION PURSUANT TO THE
21 PROCEDURES SPECIFIED IN SECTION 37-45-113.

22 (3) IF THE ORGANIZING OR CONVERSION PETITION SO PROVIDES, AN
23 ACEQUIA WATER CONSERVANCY DISTRICT OR SUBDISTRICT:

24 (a) MAY BE KNOWN AS THE "___ ACEQUIA WATER CONSERVANCY
25 DISTRICT" OR THE "___ ACEQUIA WATER CONSERVANCY SUBDISTRICT";

26 (b) MAY HOLD ITS ELECTIONS PURSUANT TO A ONE
27 LANDOWNER-ONE VOTE SYSTEM;

1 (c) MAY REQUIRE OWNERS OF LAND IRRIGATED BY AN ACEQUIA
2 WITHIN THE DISTRICT OR SUBDISTRICT TO CONTRIBUTE LABOR TO THE
3 MAINTENANCE AND REPAIR OF THE DISTRICT'S OR SUBDISTRICT'S ACEQUIAS
4 OR, IN THE ALTERNATIVE, TO PAY AN ASSESSMENT IN LIEU OF SUCH LABOR;
5 AND

6 (d) MAY HAVE A RIGHT OF FIRST REFUSAL REGARDING THE SALE,
7 LEASE, OR EXCHANGE OF ANY SURFACE WATER RIGHT THAT HAS
8 HISTORICALLY BEEN USED BY THE ACEQUIA TO IRRIGATE LONG-LOT LAND
9 WITHIN THE DISTRICT OR SUBDISTRICT. THE BOARD SHALL OFFSET THE
10 VALUE OF SUCH RIGHT OF FIRST REFUSAL FROM ANY ASSESSMENT LEVIED
11 PURSUANT TO ARTICLE 5 OF THIS TITLE.

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