

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 09-0389.01 Thomas Morris

HOUSE BILL 09-1233

HOUSE SPONSORSHIP

Vigil,

SENATE SPONSORSHIP

Schwartz,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

Local Government and Energy

A BILL FOR AN ACT

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

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.

SENATE
3rd Reading Unam ended
March 18, 2009

SENATE
2nd Reading Unam ended
March 16, 2009

HOUSE
3rd Reading Unam ended
February 25, 2009

HOUSE
Am ended 2nd Reading
February 24, 2009

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

13 **SECTION 2.** Article 42 of title 7, Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW SECTION to read:

15 **7-42-101.5. Acequia mutual ditch - definition - powers.**

16 (1) FOR PURPOSES OF THIS SECTION, "ACEQUIA" MEANS A DITCH THAT:

17 (a) ORIGINATED PRIOR TO COLORADO'S STATEHOOD;

18 (b) HAS HISTORICALLY TREATED WATER DIVERTED BY THE
19 ACEQUIA AS A COMMUNITY RESOURCE AND HAS THEREFORE ATTEMPTED
20 TO ALLOCATE WATER IN THE ACEQUIA BASED UPON EQUITY IN ADDITION
21 TO PRIORITY;

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

24 (d) 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 (e) HAS HISTORICALLY BEEN OPERATED PURSUANT TO A ONE

1 LANDOWNER-ONE VOTE SYSTEM; AND

2 (f) HAS HISTORICALLY RELIED ON LABOR SUPPLIED BY THE
3 OWNERS OF IRRIGATED LAND SERVED BY THE ACEQUIA.

4 (2) SUBJECT TO ANY CONTRARY PROVISION OF SUBSECTION (3) OF
5 THIS SECTION, THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF
6 THIS ARTICLE OTHER THAN THIS SECTION THAT APPLY TO THE CREATION,
7 POWERS, DUTIES, AND GOVERNANCE OF A DITCH CORPORATION SUBJECT
8 TO THIS ARTICLE SHALL BE DEEMED TO APPLY TO THE CREATION, POWERS,
9 DUTIES, AND GOVERNANCE OF AN ACEQUIA DITCH CORPORATION.

10 (3) AN ACEQUIA DITCH CORPORATION MAY BE ORGANIZED
11 PURSUANT TO THIS ARTICLE, AND A DITCH CORPORATION ORGANIZED
12 PURSUANT TO THIS ARTICLE MAY CONVERT TO AN ACEQUIA DITCH
13 CORPORATION, IF:

14 (a) AT LEAST TWO-THIRDS OF THE IRRIGATED LAND SERVED BY THE
15 DITCH IS PLATTED OR ORGANIZED INTO LONG LOTS, THE LONGEST AXES OF
16 WHICH ARE PERPENDICULAR TO THE STREAM OR DITCH;

17 (b) SURFACE WATER RIGHTS PROVIDE ALL OF THE WATER RIGHTS
18 USED FOR IRRIGATION IN THE DITCH, AND SUCH WATER RIGHTS HAVE HAD
19 SUBSTANTIALLY UNINTERRUPTED USE SINCE BEFORE COLORADO'S
20 STATEHOOD;

21 (c) THE IRRIGATED LAND SERVED BY THE DITCH IS LOCATED
22 WHOLLY IN ONE OR MORE OF THE COUNTIES OF COSTILLA, CONEJOS,
23 HUERFANO, AND LAS ANIMAS; AND

24 (d) AS REQUIRED PURSUANT TO SECTION 7-42-101, THE
25 STOCKHOLDERS OF THE DITCH FILE ARTICLES OF INCORPORATION, OR AN
26 AMENDMENT TO THE ARTICLES OF INCORPORATION, THAT STATE THE
27 STOCKHOLDERS' INTENTION TO CREATE OR CONVERT TO AN ACEQUIA

1 DITCH CORPORATION.

2 (4) AN ACEQUIA DITCH CORPORATION, IF ITS ARTICLES OF
3 INCORPORATION SO STATE, MAY SPECIFY IN ITS BYLAWS THAT:

4 (a) ITS ELECTIONS MAY BE HELD PURSUANT TO A ONE
5 LANDOWNER-ONE VOTE SYSTEM;

6 (b) OWNERS OF LAND IRRIGATED BY THE DITCH CAN BE REQUIRED
7 TO CONTRIBUTE LABOR TO THE MAINTENANCE AND REPAIR OF THE
8 ACEQUIA OR, IN THE ALTERNATIVE, TO PAY AN ASSESSMENT IN LIEU OF
9 SUCH LABOR;

10 (c) WATER IN THE DITCH MAY BE ALLOCATED ON A BASIS OTHER
11 THAN PRO RATA OWNERSHIP OF THE CORPORATION; AND

12 (d) THE CORPORATION HAS A RIGHT OF FIRST REFUSAL REGARDING
13 THE SALE, LEASE, OR EXCHANGE OF ANY SURFACE WATER RIGHT THAT HAS
14 HISTORICALLY BEEN USED TO IRRIGATE LONG-LOT LAND BY THE ACEQUIA.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.