

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

REVISED

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

LLS NO. 13-0109.01 Jennifer Berman

SENATE BILL 13-074

SENATE SPONSORSHIP

Hodge, Baumgardner, Brophy, Giron, Roberts

HOUSE SPONSORSHIP

Sonnenberg, Fischer

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

Agriculture, Livestock, & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING THE RESOLUTION OF AMBIGUITIES IN OLD WATER RIGHT**
102 **DECREES REGARDING THE PLACE OF USE OF IRRIGATION WATER.**

Bill Summary

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

Water Resources Review Committee. Current law requires irrigation water right decrees to specify the acreage on which the water may be used, but some older decrees do not include an acreage limitation. For such decrees, water courts look to the original appropriator's intent in determining the lawful historical consumptive use of a decreed irrigation water right; however, it is often very difficult to determine the original appropriator's intent, which has resulted in cases that substantially

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.

HOUSE
Amended 2nd Reading
March 8, 2013

SENATE
3rd Reading Unamended
February 20, 2013

SENATE
Amended 2nd Reading
February 19, 2013

decrease the acreage that has historically been irrigated by a water right.

The bill creates a mechanism to determine the amount of acreage for an irrigation water right for which the original decree predates 1937 and is unclear about the amount of acreage that may be irrigated under the water right.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-305, **amend**
3 (4) (a) (I) as follows:

4 **37-92-305. Standards with respect to rulings of the referee and**
5 **decisions of the water judge.** (4) (a) Terms and conditions to prevent
6 injury as specified in subsection (3) of this section may include:

7 (I) (A) A limitation on the use of the water that is subject to the
8 change, taking into consideration the historical use and the flexibility
9 required by annual climatic differences.

10 (B) FOR PURPOSES OF DETERMINING LAWFUL HISTORICAL
11 USE, IF A DECREE ENTERED BEFORE JANUARY 1, 1937, ESTABLISHES AN
12 IRRIGATION WATER RIGHT AND DOES NOT EXPRESSLY LIMIT THE NUMBER
13 OF ACRES THAT THE APPROPRIATOR MAY IRRIGATE UNDER THE WATER
14 RIGHT, THE LAWFUL MAXIMUM AMOUNT OF IRRIGATED ACREAGE EQUALS
15 THE MAXIMUM AMOUNT OF ACREAGE IRRIGATED IN COMPLIANCE WITH ALL
16 EXPRESS PROVISIONS OF THE DECREE DURING THE FIRST FIFTY YEARS
17 AFTER ENTRY OF THE ORIGINAL DECREE, UNLESS A COURT OF COMPETENT
18 JURISDICTION HAS ENTERED A FINAL JUDGMENT TO THE CONTRARY.
19 IRRIGATED ACREAGE NOT EXCEEDING THE LAWFUL MAXIMUM AMOUNT
20 AND LOCATED WITHIN A REASONABLE PROXIMITY TO THE DITCH,
21 INCLUDING EXTENSIONS AND LATERAL DELIVERY INFRASTRUCTURE, AS
22 CONSTRUCTED WITHIN THE FIRST FIFTY-YEAR PERIOD AFTER ENTRY OF THE
23 ORIGINAL DECREE, MAY BE INCLUDED IN THE HISTORICAL AVERAGE IN AN

1 HISTORICAL CONSUMPTIVE USE ANALYSIS SUPPORTING A CHANGE OF
2 WATER RIGHT APPLICATION.

3 **SECTION 2.** In Colorado Revised Statutes, 37-92-503, **add** (9)
4 as follows:

5 **37-92-503. Enforcement - injunction.** (9) IN THE CASE OF AN
6 ACTION INITIATED BY THE STATE ENGINEER OR ANOTHER PERSON
7 ALLEGING EXPANDED OR UNLAWFUL USE OF A WATER RIGHT DECREED FOR
8 IRRIGATION, THE LAWFUL MAXIMUM AMOUNT OF IRRIGATED ACREAGE FOR
9 A DECREE ENTERED BEFORE JANUARY 1, 1937, THAT ESTABLISHES AN
10 IRRIGATION WATER RIGHT AND DOES NOT EXPRESSLY LIMIT THE NUMBER
11 OF ACRES THAT THE APPROPRIATOR MAY IRRIGATE UNDER THE WATER
12 RIGHT EQUALS THE MAXIMUM AMOUNT OF ACREAGE IRRIGATED IN
13 COMPLIANCE WITH THE EXPRESS PROVISIONS OF THE DECREE DURING THE
14 FIRST FIFTY YEARS AFTER THE ENTRY OF THE ORIGINAL DECREE, UNLESS
15 A COURT OF COMPETENT JURISDICTION HAS ENTERED A FINAL JUDGMENT
16 TO THE CONTRARY. IRRIGATION OF ACREAGE NOT EXCEEDING THE LAWFUL
17 MAXIMUM AMOUNT AND LOCATED WITHIN A REASONABLE PROXIMITY TO
18 THE DITCH, INCLUDING EXTENSIONS AND LATERAL DELIVERY
19 INFRASTRUCTURE, AS CONSTRUCTED WITHIN THE FIRST FIFTY-YEAR PERIOD
20 AFTER ENTRY OF THE ORIGINAL DECREE IS DEEMED LAWFUL FOR
21 CONTINUED IRRIGATION UNDER THE WATER RIGHT.

22 **SECTION 3. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly (August
25 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
26 referendum petition is filed pursuant to section 1 (3) of article V of the
27 state constitution against this act or an item, section, or part of this act

1 within such period, then the act, item, section, or part will not take effect
2 unless approved by the people at the general election to be held in
3 November 2014 and, in such case, will take effect on the date of the
4 official declaration of the vote thereon by the governor.