

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

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 THE
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 MAY BE INCLUDED IN THE HISTORICAL AVERAGE IN AN HISTORICAL
21 CONSUMPTIVE USE ANALYSIS SUPPORTING A CHANGE OF WATER RIGHT
22 APPLICATION.

23 **SECTION 2.** In Colorado Revised Statutes, 37-92-503, **add** (9)

1 as follows:

2 **37-92-503. Enforcement - injunction.** (9) IN THE CASE OF AN
3 ACTION INITIATED BY THE STATE ENGINEER OR ANOTHER PERSON
4 ALLEGING EXPANDED OR UNLAWFUL USE OF A WATER RIGHT DECREED FOR
5 IRRIGATION, THE LAWFUL MAXIMUM AMOUNT OF IRRIGATED ACREAGE FOR
6 A DECREE ENTERED BEFORE JANUARY 1, 1937, THAT ESTABLISHES AN
7 IRRIGATION WATER RIGHT AND DOES NOT EXPRESSLY LIMIT THE NUMBER
8 OF ACRES THAT THE APPROPRIATOR MAY IRRIGATE UNDER THE WATER
9 RIGHT EQUALS THE MAXIMUM AMOUNT OF ACREAGE IRRIGATED IN
10 COMPLIANCE WITH THE EXPRESS PROVISIONS OF THE DECREE DURING THE
11 FIRST FIFTY YEARS AFTER THE ENTRY OF THE ORIGINAL DECREE, UNLESS
12 A COURT OF COMPETENT JURISDICTION HAS ENTERED A FINAL JUDGMENT
13 TO THE CONTRARY.

14 **SECTION 3. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2014 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.