

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REVISED

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

LLS NO. 17-1095.01 Thomas Morris x4218

HOUSE BILL 17-1291

HOUSE SPONSORSHIP

Arndt and Becker J.,

SENATE SPONSORSHIP

Coram,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

Agriculture, Natural Resources, & Energy

A BILL FOR AN ACT

101 **CONCERNING THE ABILITY TO STORE WATER AT AN ALTERNATE PLACE**
102 **OF STORAGE IF THE HISTORICAL CONSUMPTIVE USE OF THE**
103 **WATER RIGHT HAS ALREADY BEEN QUANTIFIED IN A PREVIOUS**
104 **CHANGE OF THE WATER RIGHT.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law allows water to be stored only at a location that has been specifically identified in a decree. The bill allows a water right for which the historical consumptive use was previously quantified to be

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
2nd Reading Unamended
May 2, 2017

HOUSE
3rd Reading Unamended
April 24, 2017

HOUSE
Amended 2nd Reading
April 21, 2017

stored in any reservoir, without the necessity of adjudicating an additional change of water right, if:

- ! The water will be diverted from a point of diversion that has already been decreed for that water right;
- ! Previous notice is given to the division engineer;
- ! Transit and ditch losses are assessed from the decreed point of diversion to the alternate place of storage; and
- ! The division engineer approves the proposed accounting of the storage.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-87-101, **add** (3)
3 as follows:

4 **37-87-101. Storage of water.** (3) (a) WATER ATTRIBUTABLE TO
5 A WATER RIGHT FOR WHICH A PREVIOUS CHANGE OF WATER RIGHT HAS
6 BEEN JUDICIALLY APPROVED, THAT HAS BEEN DECREED FOR STORAGE, AND
7 FOR WHICH THE HISTORICAL CONSUMPTIVE USE WAS PREVIOUSLY
8 QUANTIFIED MAY BE STORED IN ANY RESERVOIR THAT IS LOCATED ON THE
9 SAME DITCH OR DIVERSION SYSTEM, INCLUDING A NONTRIBUTARY AQUIFER
10 IF THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION ARE COMPLIED
11 WITH, AS AN ALTERNATE PLACE OF STORAGE IF:

12 (I) THE WATER THAT IS TO BE STORED AT THE ALTERNATE PLACE
13 OF STORAGE IS DIVERTED FROM A POINT OF DIVERSION THAT HAS ALREADY
14 BEEN DECREED FOR THAT WATER RIGHT;

15 (II) THE OWNER OR OPERATOR OF THE STORAGE WATER RIGHT
16 GIVES PREVIOUS NOTICE TO THE DIVISION ENGINEER THAT IDENTIFIES THE
17 WATER RIGHT, ALTERNATE PLACE OF STORAGE, DECREED POINT OF
18 DIVERSION, AND HOW THE STORAGE OF THE WATER IN THE ALTERNATE
19 PLACE OF STORAGE WILL BE ACCOUNTED FOR;

20 (III) TRANSIT AND DITCH LOSSES, IF APPLICABLE, ARE ASSESSED

1 AGAINST THE WATER RIGHT FROM THE DECREED POINT OF DIVERSION TO
2 THE ALTERNATE PLACE OF STORAGE; AND

3 (IV) THE DIVISION ENGINEER HAS APPROVED THE ACCOUNTING
4 FOR THE STORAGE OF THE WATER IN THE ALTERNATE PLACE OF STORAGE.

5 (b) A PERSON WHO IS ENTITLED TO CLAIM INJURY TO A WATER
6 RIGHT HAS THE RIGHT TO A DE NOVO HEARING BEFORE THE WATER COURT
7 TO ARGUE THAT AN ALTERNATE PLACE OF STORAGE INJURES THE PERSON'S
8 WATER RIGHT.

9 (c) NOTHING IN THIS SUBSECTION (3) ALLOWS THE STORAGE OF
10 WATER IN AN ALTERNATE PLACE OF STORAGE IF THAT WATER WAS
11 IMPORTED FROM ANOTHER WATER DIVISION.

12 (d) OTHER THAN THE PLACE OF STORAGE, ALL OF THE TERMS AND
13 CONDITIONS OF THE PREVIOUS CHANGE OF WATER RIGHT DECREE
14 CONTINUE TO APPLY TO THE WATER RIGHT.

15 **SECTION 2.** In Colorado Revised Statutes, 37-92-103, **amend**
16 the introductory portion and (5) as follows:

17 **37-92-103. Definitions.** As used in this ~~article~~ ARTICLE 92, unless
18 the context otherwise requires:

19 (5) "Change of water right":

20 (a) Means a change in the type, place, or time of use, a change in
21 the point of diversion except as specified in section 37-86-111 (2), a
22 change from a fixed point of diversion to alternate or supplemental points
23 of diversion, a change from alternate or supplemental points of diversion
24 to a fixed point of diversion, a change in the means of diversion, a change
25 in the place of storage EXCEPT AS SPECIFIED IN SECTION 37-87-101 (3), a
26 change from direct application to storage and subsequent application, a
27 change from storage and subsequent application to direct application, a

1 change from a fixed place of storage to alternate places of storage, a
2 change from alternate places of storage to a fixed place of storage, or any
3 combination of such changes; ~~The term "change of water right" AND~~

4 (b) Includes changes of conditional water rights as well as
5 changes of water rights.

6 **SECTION 3. Act subject to petition - effective date -**
7 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
8 the expiration of the ninety-day period after final adjournment of the
9 general assembly (August 9, 2017, if adjournment sine die is on May 10,
10 2017); except that, if a referendum petition is filed pursuant to section 1
11 (3) of article V of the state constitution against this act or an item, section,
12 or part of this act within such period, then the act, item, section, or part
13 will not take effect unless approved by the people at the general election
14 to be held in November 2018 and, in such case, will take effect on the
15 date of the official declaration of the vote thereon by the governor.

16 (2) This act applies to water diverted for storage on or after the
17 applicable effective date of this act.