

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

ENGROSSED

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

LLS NO. 21-0262.01 Jery Payne x2157

HOUSE BILL 21-1046

HOUSE SPONSORSHIP

Arndt and Catlin,

SENATE SPONSORSHIP

Fields and Sonnenberg,

House Committees

Agriculture, Livestock, & Water

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF A WATER RIGHT OBTAINED THROUGH A**
102 **MUTUAL DITCH CORPORATION.**

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>.)

For a mutual ditch corporation, the bill creates a presumption, which may be changed by changing the corporation's articles of incorporation or bylaws, that the shares of stock owned by a stockholder in the corporation represent:

- The right to use the water rights appropriated or purchased by the corporation; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
March 22, 2021

- Corresponding rights to divert and deliver the stockholder's water rights through a ditch, canal, reservoir, or other works.

The bill also authorizes these water rights to be limited to a pro rata amount at times when shareholder demand exceeds available supply. A mutual ditch corporation may operate using traditional ditch operating practices.

The bill clarifies that:

- When a shareholder is not using some of or all of the available water under the shareholder's rights, the right to use the water rights does not include the right to prevent other stockholders from using any portion of the corporation's water rights; and
- The statutes covering ditch and reservoir companies do not prevent a stockholder from changing the use of the stockholder's shares or change the standards for water court approval to change a water right.

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

2 **SECTION 1.** In Colorado Revised Statutes, 7-42-101, **add** (4) as
3 follows:

4 **7-42-101. Additional statements in certificates - mutual ditch**
5 **corporation shares.** (4) (a) SUBJECT TO ANY DECREE FOR THE WATER
6 RIGHTS HELD IN THE NAME OF A MUTUAL DITCH CORPORATION AND TO A
7 MUTUAL DITCH CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS,
8 A MUTUAL DITCH CORPORATION DELIVERING DIRECT FLOW WATER RIGHTS
9 MAY PROVIDE WATER TO ONLY WATER-REQUESTING STOCKHOLDERS,
10 INCLUDING STOCKHOLDERS THAT OWN SHARES FOR WHICH A CHANGE IN
11 USE HAS BEEN ADJUDICATED OR APPROVED. CONSISTENT WITH EACH
12 STOCKHOLDER'S REQUEST AND THE AVAILABLE WATER SUPPLY, A MUTUAL
13 DITCH CORPORATION MAY PROVIDE WATER AT RATES OF FLOW GREATER
14 OR LESS THAN EACH STOCKHOLDER'S PRO-RATA OWNERSHIP OF SHARES IN
15 THE CORPORATION. WHEN TOTAL STOCKHOLDER DEMAND EXCEEDS
16 AVAILABLE WATER SUPPLY, A MUTUAL DITCH CORPORATION SHALL

1 PROVIDE, TO THE EXTENT POSSIBLE, A PRO RATA AMOUNT OF WATER TO
2 ALL STOCKHOLDERS THAT ARE REQUESTING WATER, EITHER
3 SIMULTANEOUSLY OR, IF NECESSARY, BY ROTATING AMONG
4 STOCKHOLDERS IN SECTIONS OR BY OTHER EQUITABLE METHODS AS
5 DETERMINED BY THE CORPORATION.

6 (b) SUBJECT TO SUBSECTION (4)(c)(IV) OF THIS SECTION, IF A
7 WATER COURT DECREE AUTHORIZING THE CHANGE IN USE OF THE WATER
8 RIGHTS REPRESENTED BY MUTUAL DITCH CORPORATION SHARES CONTAINS
9 VOLUMETRIC LIMITS ON THE AMOUNT OF WATER DELIVERABLE TO THE
10 CHANGED SHARES, WATER DIVERTED AND DELIVERED BY THE MUTUAL
11 DITCH CORPORATION ONLY COUNTS AGAINST THE CHANGED
12 STOCKHOLDER'S VOLUMETRIC LIMITS IF THE STOCKHOLDER, OR ITS LESSEE
13 OR DESIGNEE, TAKES DELIVERY IN ACCORDANCE WITH THE CHANGE IN USE
14 DECREE.

15 (c) A COURT SHALL NOT CONSTRUE THIS SUBSECTION (4):

16 (I) (A) TO SUPERSEDE OR ABROGATE THE CONDITIONS OF ANY
17 FINAL WATER COURT DECREE ENTERED BEFORE THE EFFECTIVE DATE OF
18 THIS SUBSECTION (4); OR

19 (B) TO APPLY TO ANY WATER COURT APPLICATION FOR WHICH A
20 TRIAL WAS HELD BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (4) OR
21 TO AN APPEAL OF ANY WATER COURT DECISION OR DECREE RESULTING
22 FROM SUCH A TRIAL;

23 (II) TO IMPEDE OR PREVENT A STOCKHOLDER FROM CHANGING THE
24 TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE WATER
25 RIGHTS REPRESENTED BY THE SHARES IN A MUTUAL DITCH CORPORATION;

26 (III) TO REQUIRE OR PROHIBIT A REDUCTION IN THE FLOW RATE
27 AVAILABLE TO A STOCKHOLDER OR MUTUAL DITCH CORPORATION WHEN

1 THE TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE
2 WATER RIGHTS REPRESENTED BY THE SHARES IS LAWFULLY CHANGED;

3 (IV) (A) TO AMEND OR MODIFY THE STANDARDS IN SECTION
4 37-92-305 FOR WATER COURT APPROVAL OF A CHANGE IN USE; OR

5 (B) TO AMEND OR MODIFY THE COURT'S ABILITY TO ORDER
6 CONDITIONS NECESSARY TO PREVENT AN ENLARGEMENT UPON THE
7 HISTORICAL USE OF WATER RIGHTS FOR WHICH A CHANGE IS SOUGHT OR TO
8 PREVENT A DIMINUTION OF RETURN FLOW HISTORICALLY RESULTING FROM
9 THE USE OF THE CHANGED SHARES TO THE DETRIMENT OF OTHER
10 APPROPRIATORS; OR

11 (V) TO IMPAIR THE ABILITY OF A STOCKHOLDER TO ENTER INTO A
12 PROGRAM IDENTIFIED IN SECTION 37-92-305 (3)(c) OR TO ENTER INTO AN
13 ACQUISITION TRANSACTION PROVIDED FOR IN EITHER SECTION 37-92-102
14 (3) OR 37-83-105.

15 **SECTION 2. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly; except
18 that, if a referendum petition is filed pursuant to section 1 (3) of article V
19 of the state constitution against this act or an item, section, or part of this
20 act within such period, then the act, item, section, or part will not take
21 effect unless approved by the people at the general election to be held in
22 November 2022 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.