

HOUSE COMMITTEE OF REFERENCE REPORT

March 17, 2021

Chair of Committee

Date

Committee on Agriculture, Livestock, & Water.

After consideration on the merits, the Committee recommends the following:

HB21-1046 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 2, strike line 3 and substitute "as follows":
- 2 Page 2, strike lines 5 through 16 and substitute "**corporation shares.**
- 3 (4) (a) SUBJECT TO ANY DECREE FOR THE WATER RIGHTS HELD IN THE
- 4 NAME OF A MUTUAL DITCH CORPORATION AND TO A MUTUAL DITCH
- 5 CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS, A MUTUAL
- 6 DITCH CORPORATION DELIVERING DIRECT FLOW WATER RIGHTS MAY
- 7 PROVIDE WATER TO ONLY WATER-REQUESTING STOCKHOLDERS,
- 8 INCLUDING STOCKHOLDERS THAT OWN SHARES FOR WHICH A CHANGE IN
- 9 USE HAS BEEN ADJUDICATED OR APPROVED. CONSISTENT WITH EACH
- 10 STOCKHOLDER'S REQUEST AND THE AVAILABLE WATER SUPPLY, A MUTUAL
- 11 DITCH CORPORATION MAY PROVIDE WATER AT RATES OF FLOW GREATER
- 12 OR LESS THAN EACH STOCKHOLDER'S PRO-RATA OWNERSHIP OF SHARES IN
- 13 THE CORPORATION. WHEN TOTAL STOCKHOLDER DEMAND EXCEEDS
- 14 AVAILABLE WATER SUPPLY, A MUTUAL DITCH CORPORATION SHALL
- 15 PROVIDE, TO THE EXTENT POSSIBLE, A PRO RATA AMOUNT OF WATER TO
- 16 ALL STOCKHOLDERS THAT ARE REQUESTING WATER, EITHER
- 17 SIMULTANEOUSLY OR, IF NECESSARY, BY ROTATING AMONG
- 18 STOCKHOLDERS IN SECTIONS OR BY OTHER EQUITABLE METHODS AS
- 19 DETERMINED BY THE CORPORATION.
- 20 (b) SUBJECT TO SUBSECTION (4)(c)(IV) OF THIS SECTION, IF A
- 21 WATER COURT DECREE AUTHORIZING THE CHANGE IN USE OF THE WATER
- 22 RIGHTS REPRESENTED BY MUTUAL DITCH CORPORATION SHARES CONTAINS
- 23 VOLUMETRIC LIMITS ON THE AMOUNT OF WATER DELIVERABLE TO THE

1 CHANGED SHARES, WATER DIVERTED AND DELIVERED BY THE MUTUAL
2 DITCH CORPORATION ONLY COUNTS AGAINST THE CHANGED
3 STOCKHOLDER'S VOLUMETRIC LIMITS IF THE STOCKHOLDER, OR ITS LESSEE
4 OR DESIGNEE, TAKES DELIVERY IN ACCORDANCE WITH THE CHANGE IN USE
5 DECREE.
6 (c) A COURT SHALL NOT CONSTRUE THIS SUBSECTION (4):
7 (I) (A) TO SUPERSEDE OR ABROGATE THE CONDITIONS OF ANY
8 FINAL WATER COURT DECREE ENTERED BEFORE THE EFFECTIVE DATE OF
9 THIS SUBSECTION (4); OR
10 (B) TO APPLY TO ANY WATER COURT APPLICATION FOR WHICH A
11 TRIAL WAS HELD BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (4) OR
12 TO AN APPEAL OF ANY WATER COURT DECISION OR DECREE RESULTING
13 FROM SUCH A TRIAL;
14 (II) TO IMPEDE OR PREVENT A STOCKHOLDER FROM CHANGING THE
15 TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE WATER
16 RIGHTS REPRESENTED BY THE SHARES IN A MUTUAL DITCH CORPORATION;
17 (III) TO REQUIRE OR PROHIBIT A REDUCTION IN THE FLOW RATE
18 AVAILABLE TO A STOCKHOLDER OR MUTUAL DITCH CORPORATION WHEN
19 THE TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE
20 WATER RIGHTS REPRESENTED BY THE SHARES IS LAWFULLY CHANGED;
21 (IV) (A) TO AMEND OR MODIFY THE STANDARDS IN SECTION
22 37-92-305 FOR WATER COURT APPROVAL OF A CHANGE IN USE; OR
23 (B) TO AMEND OR MODIFY THE COURT'S ABILITY TO ORDER
24 CONDITIONS NECESSARY TO PREVENT AN ENLARGEMENT UPON THE
25 HISTORICAL USE OF WATER RIGHTS FOR WHICH A CHANGE IS SOUGHT OR TO
26 PREVENT A DIMINUTION OF RETURN FLOW HISTORICALLY RESULTING FROM
27 THE USE OF THE CHANGED SHARES TO THE DETRIMENT OF OTHER
28 APPROPRIATORS; OR
29 (V) TO IMPAIR THE ABILITY OF A STOCKHOLDER TO ENTER INTO A
30 PROGRAM IDENTIFIED IN SECTION 37-92-305 (3)(c) OR TO ENTER INTO AN
31 ACQUISITION TRANSACTION PROVIDED FOR IN EITHER SECTION 37-92-102
32 (3) OR 37-83-105."

33 Page 3, strike lines 1 through 16.

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