

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

INTRODUCED

LLS NO. 17-0995.01 Thomas Morris x4218

HOUSE BILL 17-1289

HOUSE SPONSORSHIP

Valdez and Hansen,

SENATE SPONSORSHIP

Coram and Crowder,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT THE STATE ENGINEER**
102 **PROMULGATE RULES THAT ESTABLISH AN OPTIONAL**
103 **STREAMLINED APPROACH TO CALCULATE THE HISTORICAL**
104 **CONSUMPTIVE USE OF A 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>.)

When a water right owner wishes to change a water right—whether a temporary loan or change approved by the state engineer or a permanent change approved by a water judge—the determination of the amount of

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.

water that can be loaned or changed relies on a calculation of the historical consumptive use of the water right. The bill directs the state engineer to promulgate rules that take into account local conditions that an applicant can use to calculate historical consumptive use. The results of the calculation carry no presumptive weight before the state engineer, water referee, or water judge.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-501, **add** (5)
3 as follows:

4 **37-92-501. Jurisdiction over water - rules - legislative**
5 **declaration.** (5) (a) THE STATE ENGINEER SHALL PROMULGATE RULES
6 PURSUANT TO THIS SECTION TO DEVELOP A STREAMLINED METHODOLOGY,
7 INCLUDING A PRESCRIBED APPROACH, FOR DETERMINING FACTORS AND
8 USING OTHER ASSUMPTIONS FOR CALCULATING THE HISTORICAL
9 CONSUMPTIVE USE OF A WATER RIGHT.

10 (b) IN DEVELOPING THE RULES, THE STATE ENGINEER:

11 (I) SHALL:

12 (A) PROVIDE GUIDANCE FOR ALL COMPONENTS OF AN HISTORICAL
13 CONSUMPTIVE USE ANALYSIS FOR A CHANGE OF WATER RIGHT USING
14 GEOGRAPHICALLY SPECIFIC CONSIDERATIONS; AND

15 (B) ENSURE THAT THE CALCULATION OF THE HISTORICAL
16 CONSUMPTIVE USE COMPLIES WITH SECTION 37-92-305 (3); AND

17 (II) SHOULD CONSIDER THE LEASE FOLLOWING TOOL DEVELOPED
18 TO ANALYZE APPLICATIONS FOR FALLOWING AND LEASING PILOT PROJECTS
19 PURSUANT TO SECTION 37-60-115 (8) AS THE BASIS FOR A TECHNICAL
20 PLATFORM.

21 (c) AN APPLICANT IN ANY PROCEEDING HELD PURSUANT TO THIS
22 TITLE 37 IN WHICH THE HISTORICAL CONSUMPTIVE USE OF A WATER RIGHT

1 MUST BE DETERMINED, REGARDLESS OF WHETHER THE DETERMINATION IS
2 INITIALLY OR FINALLY APPROVED BY THE STATE ENGINEER, A WATER
3 REFEREE, OR A WATER JUDGE, MAY USE THE RULES' METHODOLOGY,
4 APPROACH, AND FACTORS TO CALCULATE THE HISTORICAL CONSUMPTIVE
5 USE OF A WATER RIGHT SUBJECT TO THE PROCEEDING. THE USE OF THE
6 METHODOLOGY, APPROACH, AND FACTORS IS VOLUNTARY, AND THE
7 RESULTING CALCULATION OF HISTORICAL CONSUMPTIVE USE CARRIES NO
8 PRESUMPTIVE EFFECT IN THE DETERMINATION BY THE STATE ENGINEER,
9 WATER REFEREE, OR WATER JUDGE.

10 (d) THE GENERAL ASSEMBLY DECLARES THAT ITS INTENT IN
11 ENACTING THIS SUBSECTION (5) IS TO PROVIDE AN ALTERNATIVE THAT
12 WILL REDUCE TRANSACTION COSTS AND THE TIME NECESSARY TO APPROVE
13 LOANS AND TEMPORARY AND PERMANENT CHANGES OF WATER RIGHTS
14 WHILE ENSURING THAT NO INJURY RESULTS FROM APPROVAL OF THE
15 APPLICATION.

16 **SECTION 2. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly (August
19 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
20 referendum petition is filed pursuant to section 1 (3) of article V of the
21 state constitution against this act or an item, section, or part of this act
22 within such period, then the act, item, section, or part will not take effect
23 unless approved by the people at the general election to be held in
24 November 2018 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.