A BILL FOR AN ACT

CONCERNING A REQUIREMENT THAT THE STATE ENGINEER PROMULGATE RULES THAT ESTABLISH AN OPTIONAL STREAMLINED APPROACH TO CALCULATE THE HISTORICAL 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
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.

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

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

37-92-501. Jurisdiction over water - rules - legislative declaration. (5) (a) The state engineer shall promulgate rules pursuant to this section to develop a streamlined methodology, including a prescribed approach, for determining factors and using other assumptions for calculating the historical consumptive use of a water right.

(b) In developing the rules, the state engineer:

(I) Shall:

(A) Provide guidance for all components of an historical consumptive use analysis for a change of water right using geographically specific considerations; and

(B) Ensure that the calculation of the historical consumptive use complies with section 37-92-305 (3); and

(II) Should consider the lease fallowing tool developed to analyze applications for fallowing and leasing pilot projects pursuant to section 37-60-115 (8) as the basis for a technical platform.

(c) An applicant in any proceeding held pursuant to this title 37 in which the historical consumptive use of a water right
MUST BE DETERMINED, REGARDLESS OF WHETHER THE DETERMINATION IS
INITIALLY OR FINALLY APPROVED BY THE STATE ENGINEER, A WATER
REFEREE, OR A WATER JUDGE, MAY USE THE RULES' METHODOLOGY,
APPROACH, AND FACTORS TO CALCULATE THE HISTORICAL CONSUMPTIVE
USE OF A WATER RIGHT SUBJECT TO THE PROCEEDING. THE USE OF THE
METHODOLOGY, APPROACH, AND FACTORS IS VOLUNTARY, AND THE
RESULTING CALCULATION OF HISTORICAL CONSUMPTIVE USE CARRIES NO
PRESUMPTIVE EFFECT IN THE DETERMINATION BY THE STATE ENGINEER,
WATER REFEREE, OR WATER JUDGE.

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

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