

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

INTRODUCED

LLS NO. 17-1109.01 Thomas Morris x4218

SENATE BILL 17-282

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

McKean and Esgar,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE DEDICATION OF RESERVOIR RELEASES FOR**
102 **ENVIRONMENTAL PURPOSES.**

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>.)

The bill creates a process whereby an owner of a storage water right may obtain a decree that authorizes releases from storage to a downstream point of diversion or delivery for decreed beneficial uses to be dedicated to, and used by, the Colorado water conservation board in the intervening stream reach to preserve or improve the natural environment to a reasonable degree if specified conditions are satisfied.

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.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby:

4 (a) Finds that allowing the owner of a storage water right to
5 contract with the Colorado water conservation board for dedications of
6 reservoir releases in identified stream reaches between the point of
7 release and the point of downstream diversion or delivery for existing
8 decreed beneficial uses will enable preservation or improvement of the
9 natural environment, pursuant to section 37-92-102 (3), C.R.S., and
10 maximize the beneficial use of the waters of the state while protecting
11 existing water rights from injury;

12 (b) Determines that:

13 (I) It is necessary to create a water court process to allow the
14 owner of a storage water right to protect and maintain dominion and
15 control over the water released from a specified reservoir (a "qualifying
16 release") throughout the reach of the natural stream from the point where
17 the reservoir releases enter the natural stream to a downstream point of
18 diversion or delivery (a "qualifying stream reach") where the qualifying
19 release would be diverted or delivered for the storage water right's
20 decreed beneficial uses; and

21 (II) The protection provided by a water court process and resulting
22 decree will allow the qualifying releases to be protected, preventing
23 diversion of the qualifying releases by exchanges, plans of substitutions,
24 or plans of augmentation to the extent that protection of the qualifying
25 releases does not cause injury to existing vested water rights; and

26 (c) Declares that, through the protection of the qualifying releases

1 and the contractual dedication of those qualifying releases to the Colorado
2 water conservation board, those protected qualifying releases will be able
3 to serve a secondary instream beneficial use, specifically the preservation
4 or improvement of the natural environment to a reasonable degree.

5 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.7)
6 as follows:

7 **37-92-305. Standards with respect to rulings of the referee and**
8 **decisions of the water judge - definitions. (3.7) Dedication of**
9 **reservoir releases to the Colorado water conservation board. (a) FOR**
10 **PURPOSES OF THIS SUBSECTION (3.7):**

11 (I) "BOARD" MEANS THE COLORADO WATER CONSERVATION
12 BOARD.

13 (II) "QUALIFYING RELEASE" MEANS A RELEASE OF STORED
14 RESERVOIR WATER THAT WAS LAWFULLY STORED IN PRIORITY OR
15 PURSUANT TO AN APPROVED AUGMENTATION PLAN, EXCHANGE OF WATER,
16 OR SUBSTITUTE WATER SUPPLY PLAN.

17 (III) "QUALIFYING STREAM REACH" MEANS A REACH OF A
18 NATURAL STREAM WITHIN THE STATE OF COLORADO BETWEEN A POINT
19 WHERE WATER IS RELEASED FROM A RESERVOIR INTO THE NATURAL
20 STREAM AND THE DOWNSTREAM POINT OF DIVERSION OR POINT OF
21 DELIVERY, REGARDLESS OF WHETHER THE BOARD HOLDS OR HAS
22 APPROPRIATED ANY INSTREAM FLOW WATER RIGHTS.

23 (IV) "RESERVOIR RELEASE DEDICATION" MEANS A DEDICATION OF
24 ONE OR MORE RESERVOIR RELEASES BEING CONVEYED IN THE NATURAL
25 STREAM PURSUANT TO A CONTRACT BETWEEN THE OWNER OF A STORAGE
26 WATER RIGHT AND THE BOARD WHEREBY:

27 (A) THE OWNER OF THE STORAGE WATER RIGHT AGREES TO

1 DEDICATE, AND THE BOARD AGREES TO ACCEPT THE DEDICATION OF, ONE
2 OR MORE QUALIFYING RELEASES FROM A RESERVOIR WITHIN A QUALIFYING
3 STREAM REACH FOR PURPOSES OF PRESERVING OR IMPROVING THE
4 NATURAL ENVIRONMENT TO A REASONABLE DEGREE;

5 (B) THE DIVISION ENGINEER ADMINISTERS THE QUALIFYING
6 RELEASES IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE
7 WATER COURT DECREE SO AS TO PROHIBIT THE DIVERSION OF ANY AMOUNT
8 OF THE QUALIFYING RELEASE WITHIN THE QUALIFYING STREAM REACH,
9 REGARDLESS OF WHETHER SUCH DIVERSION IS REPLACED BY
10 AUGMENTATION, SUBSTITUTION, OR EXCHANGE AT A LOWER POINT ON THE
11 STREAM;

12 (C) WATER PRESENT IN THE STREAM REACH, OTHER THAN THE
13 QUALIFYING RELEASE, WILL REMAIN AVAILABLE TO WATER USERS FOR
14 BENEFICIAL USE; AND

15 (D) THE FULL AMOUNT OF THE QUALIFYING RELEASE, LESS STREAM
16 CONVEYANCE LOSSES AS DETERMINED BY THE DIVISION ENGINEER, WILL
17 BE DIVERTED OR DELIVERED FOR DECREED BENEFICIAL USES THAT ARE
18 CONSISTENT WITH EXISTING DECREES AT THE DOWNSTREAM TERMINUS OF
19 THE QUALIFYING STREAM REACH.

20 (b) (I) (A) TO MAKE A RESERVOIR RELEASE DEDICATION, AN
21 OWNER OF A STORAGE WATER RIGHT MUST FILE AN APPLICATION IN WATER
22 COURT FOR APPROVAL OF THE DEDICATION.

23 (B) THE IMPLEMENTATION AND ADMINISTRATION OF A RESERVOIR
24 RELEASE DEDICATION MUST NOT RESULT IN INJURY TO VESTED WATER
25 RIGHTS OR SUBSEQUENTLY ADJUDICATED WATER RIGHTS THAT ARE THE
26 SUBJECT OF A PENDING WATER COURT APPLICATION FILED BEFORE THE
27 EFFECTIVE DATE OF THIS SUBSECTION (3.7) WITH PRIORITY DATES SENIOR

1 TO THE FILING DATE OF THE APPLICATION FOR A RESERVOIR RELEASE
2 DEDICATION. THE WATER COURT SHALL NOT CONSIDER THE INABILITY TO
3 UTILIZE WATER FROM ANY QUALIFYING RELEASES THAT ARE MADE FROM
4 A RESERVOIR THAT HAS NOT YET BEEN CONSTRUCTED OR A RESERVOIR
5 THAT HAS NOT YET RELEASED WATER FROM STORAGE TO THE NATURAL
6 STREAM AT THE TIME OF THE FILING OF THE RESERVOIR RELEASE
7 DEDICATION APPLICATION IN WATER COURT AS INJURY TO VESTED WATER
8 RIGHTS OR TO SUBSEQUENTLY ADJUDICATED WATER RIGHTS THAT ARE THE
9 SUBJECT OF A PENDING WATER COURT APPLICATION FILED BEFORE THE
10 EFFECTIVE DATE OF THIS SUBSECTION (3.7) WITH PRIORITY DATES SENIOR
11 TO THE FILING DATE OF THE APPLICATION, BECAUSE NO HISTORIC RELIANCE
12 ON SUCH RELEASES BY VESTED OR PENDING WATER RIGHTS HAS
13 OCCURRED.

14 (C) EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBSECTION (3.7),
15 AN APPLICATION FOR A RESERVOIR RELEASE DEDICATION IS SUBJECT TO
16 ALL PROVISIONS OF THIS ARTICLE 92, INCLUDING THIS SECTION AND
17 SECTIONS 37-92-302 AND 37-92-304. A DECREE ENTERED PURSUANT TO
18 THIS SUBSECTION (3.7) GRANTS THE BOARD A DECREED RIGHT TO USE THE
19 QUALIFYING RELEASE IN THE QUALIFYING STREAM REACH PURSUANT TO
20 SECTION 37-92-102 (3).

21 (II) THE PROCEDURES IN THIS SUBSECTION (3.7) APPLY ONLY TO
22 APPROVAL OF A RESERVOIR RELEASE DEDICATION AND DO NOT ALTER THE
23 PROCEDURES OR LEGAL STANDARDS APPLICABLE TO A CHANGE OF WATER
24 RIGHT.

25 (III) THE OWNER OF A STORAGE WATER RIGHT MAY APPLY FOR
26 ADJUDICATION OF A RESERVOIR RELEASE DEDICATION IF:

27 (A) THE OWNER OF THE STORAGE WATER RIGHT CAN MAKE ONE OR

1 MORE QUALIFYING RELEASES; AND

2 (B) THE OWNER OF THE STORAGE WATER RIGHT AND THE BOARD
3 ENTER INTO A RESERVOIR RELEASE DEDICATION CONTRACT.

4 (IV) THE APPLICATION FOR APPROVAL OF A RESERVOIR RELEASE
5 DEDICATION MUST NOT INCLUDE OR BE CONSOLIDATED OR JOINED WITH AN
6 ACTION BY THE APPLICANT SEEKING ANY TYPE OF CHANGE OF WATER
7 RIGHT, DILIGENCE PROCEEDING, OR APPLICATION TO MAKE ABSOLUTE
8 WITH RESPECT TO THE STORAGE WATER RIGHT OR RIGHTS INCLUDED IN THE
9 APPLICATION.

10 (c) THE APPLICANT MUST PROVE, BY A PREPONDERANCE OF THE
11 EVIDENCE, THE FOLLOWING MATTERS BEFORE THE WATER JUDGE MAY
12 ENTER A DECREE GRANTING AN APPLICATION FOR A RESERVOIR RELEASE
13 DEDICATION:

14 (I) DEDICATION OF THE SUBJECT QUALIFYING RELEASE OR
15 RELEASES TO THE BOARD WILL NOT BE THE CAUSE OF ANY EXPANSION OF
16 USE OF THE PREVIOUSLY DECREED STORAGE RIGHT BEYOND THE LIMITS OF
17 THE DECREED RIGHT;

18 (II) (A) DEDICATION OF THE QUALIFYING RELEASE OR RELEASES
19 TO THE BOARD WILL NOT INJURE: THE OWNER OF OR THE PERSONS
20 ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED
21 CONDITIONAL WATER RIGHT; SUBSEQUENTLY ADJUDICATED WATER RIGHTS
22 THAT ARE THE SUBJECT OF A PENDING WATER COURT APPLICATION
23 SUBMITTED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (3.7) AND
24 THAT HAVE PRIORITY DATES SENIOR TO THE FILING OF THE APPLICATION
25 FOR A RESERVOIR RELEASE DEDICATION; OR PRESENT USES OR EXCHANGES
26 OF WATER BEING MADE BY OTHER WATER USERS PURSUANT TO
27 APPROPRIATION OR PRACTICES IN EXISTENCE ON THE DATE OF THE FILING

1 OF AN APPLICATION FOR A RESERVOIR RELEASE DEDICATION, WHETHER OR
2 NOT PREVIOUSLY CONFIRMED BY COURT ORDER OR DECREE.

3 (B) THE INABILITY OF A PERSON TO DIVERT ANY PORTION OF A
4 QUALIFYING RELEASE WHEN EXERCISING A DECREE, APPROVED
5 AUGMENTATION PLAN, EXCHANGE OF WATER, OR SUBSTITUTE WATER
6 SUPPLY PLAN FILED AFTER AN APPLICATION FOR RESERVOIR RELEASE
7 DEDICATION SHALL NOT BE CONSIDERED INJURY FOR PURPOSES OF THIS
8 SUBSECTION (3.7).

9 (III) THE BOARD HAS:

10 (A) EVALUATED THE PROPOSED QUALIFYING RELEASES IN
11 ACCORDANCE WITH ITS RULES GOVERNING THE ACQUISITION OF WATER,
12 WATER RIGHTS, AND INTERESTS IN WATER FOR INSTREAM FLOW PURPOSES;
13 AND

14 (B) DETERMINED, BASED UPON A BIOLOGICAL ANALYSIS
15 PERFORMED OR APPROVED BY THE DIVISION OF PARKS AND WILDLIFE
16 STAFF, THAT DEDICATION OF THE SUBJECT QUALIFYING RELEASES UP TO
17 THE SPECIFIED FLOW RATES WILL PRESERVE OR IMPROVE THE NATURAL
18 ENVIRONMENT TO A REASONABLE DEGREE IN THE QUALIFYING STREAM
19 REACH;

20 (IV) THE DIVISION ENGINEER CAN ADMINISTER THE PROTECTION
21 OF THE QUALIFYING RELEASE THROUGH THE QUALIFYING STREAM REACH
22 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE RESERVOIR
23 RELEASE DEDICATION DECREE; AND

24 (V) THE DEDICATION OF A QUALIFYING RELEASE, AND THE
25 PROTECTION OF THOSE QUALIFYING RELEASES THROUGH THE QUALIFYING
26 STREAM REACH, WILL RESULT IN THE PRESERVATION OR IMPROVEMENT OF
27 THE NATURAL ENVIRONMENT TO A REASONABLE DEGREE.

1 (d) AN APPLICATION FOR ADJUDICATION OF A RESERVOIR RELEASE
2 DEDICATION IS NOT AN APPLICATION FOR A CHANGE OF WATER RIGHT, AND
3 THE FOLLOWING STANDARDS APPLY TO AN APPLICATION FOR
4 ADJUDICATION OF A RESERVOIR RELEASE DEDICATION:

5 (I) THE DECREE ADJUDICATING THE RESERVOIR RELEASE
6 DEDICATION MUST NOT REQUANTIFY THE STORAGE WATER RIGHTS FROM
7 WHICH RELEASES ARE UTILIZED IN MAKING THE QUALIFYING RELEASES;
8 AND

9 (II) THE APPLICANT IS NOT REQUIRED TO:

10 (A) PROVE THAT STORED WATER UTILIZED TO MAKE THE
11 QUALIFYING RELEASE CAN AND WILL BE DIVERTED AND PUT TO USE WITHIN
12 A REASONABLE PERIOD OF TIME;

13 (B) PROVE COMPLIANCE WITH THE ANTI-SPECULATION DOCTRINE;
14 OR

15 (C) PROVE OR MAKE A SHOWING OF FUTURE NEED IMPOSED BY THE
16 CASES OF *PAGOSA AREA WATER AND SANITATION DISTRICT V. TROUT*
17 *UNLIMITED*, 219 P.3d 774 (COLO. 2009) OR *CITY OF THORNTON V. BIJOU*
18 *IRRIGATION CO.*, 926 P.2d 1 (COLO. 1996).

19 (e) THE OWNER OF THE STORAGE WATER RIGHT SOLELY
20 DETERMINES THE TIME, RATE, AND VOLUME OF ANY QUALIFYING RELEASE
21 TO BE INCLUDED IN THE CONTRACT WITH THE BOARD, SUBJECT TO THE
22 TERMS OF THE WATER COURT DECREE.

23 (f) A PERSON SHALL NOT DIVERT A QUALIFYING RELEASE MADE
24 PURSUANT TO A RESERVOIR RELEASE DEDICATION DECREE WITHIN THE
25 QUALIFYING STREAM REACH OR REACHES IDENTIFIED IN THE DECREE,
26 REGARDLESS OF WHETHER A WATER USER DESIRING TO DIVERT ALL OR A
27 PORTION OF A QUALIFYING RELEASE INTENDS TO DO SO PURSUANT TO AN

1 APPROVED AUGMENTATION PLAN, EXCHANGE OF WATER, OR SUBSTITUTE
2 WATER SUPPLY PLAN THAT ALLOWS THE USER TO REPLACE ITS DIVERSIONS
3 WITHIN THE QUALIFYING STREAM REACH. THE STATE ENGINEER SHALL
4 CURTAIL ANY DIVERSION WITHIN A QUALIFYING STREAM REACH THAT
5 INTERCEPTS ALL OR ANY PORTION OF A QUALIFYING RELEASE CONTRARY
6 TO THE TERMS AND CONDITIONS OF THE RESERVOIR RELEASE DEDICATION
7 DECREE.

8 (g) A QUALIFYING RELEASE MADE PURSUANT TO A RESERVOIR
9 RELEASE DEDICATION DECREE SHALL BE DIVERTED OR DELIVERED IN THE
10 FULL AMOUNT OF THE QUALIFYING RELEASE, LESS ANY ASSESSED TRANSIT
11 LOSSES, AT THE DOWNSTREAM TERMINUS OF THE QUALIFYING STREAM
12 REACH AND SHALL BE PUT TO BENEFICIAL USE IN ACCORDANCE WITH ALL
13 APPLICABLE DECREES AND THE RESERVOIR RELEASE DEDICATION
14 CONTRACT.

15 (h) THE DEDICATION PROCEDURES ESTABLISHED PURSUANT TO
16 THIS SUBSECTION (3.7):

17 (I) ARE NOT INTENDED TO BE THE EXCLUSIVE MEANS OF
18 APPROPRIATING, ADJUDICATING, DEDICATING, OR ADMINISTERING
19 STORAGE WATER RIGHTS AND STORAGE RELEASES FOR PISCATORIAL,
20 ENVIRONMENTAL, WATER QUALITY, RECREATIONAL, MUNICIPAL, OR OTHER
21 IN-CHANNEL PURPOSES, INCLUDING THE MAINTENANCE OF DOMINION AND
22 CONTROL OVER THE WATER RELEASED FROM A SPECIFIED RESERVOIR;

23 (II) DO NOT IMPAIR OR SUPERSEDE EXISTING WATER COURT
24 DECREES, ADMINISTRATIVE AUTHORIZATIONS, OR AGREEMENTS THAT
25 ALLOW WATER TO BE STORED, RELEASED, AND ADMINISTERED FOR
26 IN-CHANNEL ENVIRONMENTAL, PISCATORIAL, WATER QUALITY,
27 RECREATIONAL, MUNICIPAL, OR OTHER IN-CHANNEL PURPOSES, INCLUDING

1 THE MAINTENANCE OF DOMINION AND CONTROL OVER THE WATER
2 RELEASED FROM A SPECIFIED RESERVOIR; AND

3 (III) DO NOT RESTRICT OR PRECLUDE A FUTURE WATER COURT
4 DECREE, ADMINISTRATIVE AUTHORIZATION, OR AGREEMENT ALLOWING
5 WATER TO BE STORED, RELEASED, AND ADMINISTERED FOR
6 ENVIRONMENTAL, PISCATORIAL, WATER QUALITY, RECREATIONAL,
7 MUNICIPAL, OR OTHER IN-CHANNEL PURPOSES, INCLUDING THE
8 MAINTENANCE OF DOMINION AND CONTROL OVER THE WATER RELEASED
9 FROM A SPECIFIED RESERVOIR.

10 (i) THE WATER JUDGE SHALL NOT GRANT A RESERVOIR RELEASE
11 DEDICATION IF THE RELEASE WILL IMPAIR THE ABILITY TO DEVELOP WATER
12 IN THE STATE OF COLORADO UNDER INTERSTATE COMPACTS.

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

23 (2) This act applies to reservoir release dedication applications
24 filed on or after the applicable effective date of this act.