

CHAPTER 338

WATER AND IRRIGATION

HOUSE BILL 17-1291

BY REPRESENTATIVE(S) Arndt and Becker J., Becker K., Esgar, Hamner, Hansen, McLachlan, Mitsch Bush, Pettersen, Valdez, Young, Duran;
also SENATOR(S) Coram, Crowder, Jones, Scott, Sonnenberg.

AN ACT

CONCERNING THE ABILITY TO STORE WATER AT AN ALTERNATE PLACE OF STORAGE IF THE HISTORICAL CONSUMPTIVE USE OF THE WATER RIGHT HAS ALREADY BEEN QUANTIFIED IN A PREVIOUS CHANGE OF THE WATER RIGHT.

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

SECTION 1. In Colorado Revised Statutes, 37-87-101, **add** (3) as follows:

37-87-101. Storage of water. (3) (a) WATER ATTRIBUTABLE TO A WATER RIGHT FOR WHICH A PREVIOUS CHANGE OF WATER RIGHT HAS BEEN JUDICIALLY APPROVED, THAT HAS BEEN DECREED FOR STORAGE, AND FOR WHICH THE HISTORICAL CONSUMPTIVE USE WAS PREVIOUSLY QUANTIFIED MAY BE STORED IN ANY RESERVOIR THAT IS LOCATED ON THE SAME DITCH OR DIVERSION SYSTEM, INCLUDING A NONTRIBUTARY AQUIFER IF THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION ARE COMPLIED WITH, AS AN ALTERNATE PLACE OF STORAGE IF:

(I) THE WATER THAT IS TO BE STORED AT THE ALTERNATE PLACE OF STORAGE IS DIVERTED FROM A POINT OF DIVERSION THAT HAS ALREADY BEEN DECREED FOR THAT WATER RIGHT;

(II) THE OWNER OR OPERATOR OF THE STORAGE WATER RIGHT GIVES PREVIOUS NOTICE TO THE DIVISION ENGINEER THAT IDENTIFIES THE WATER RIGHT, ALTERNATE PLACE OF STORAGE, DECREED POINT OF DIVERSION, AND HOW THE STORAGE OF THE WATER IN THE ALTERNATE PLACE OF STORAGE WILL BE ACCOUNTED FOR;

(III) TRANSIT AND DITCH LOSSES, IF APPLICABLE, ARE ASSESSED AGAINST THE WATER RIGHT FROM THE DECREED POINT OF DIVERSION TO THE ALTERNATE PLACE OF STORAGE; AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(IV) THE DIVISION ENGINEER HAS APPROVED THE ACCOUNTING FOR THE STORAGE OF THE WATER IN THE ALTERNATE PLACE OF STORAGE.

(b) A PERSON WHO IS ENTITLED TO CLAIM INJURY TO A WATER RIGHT HAS THE RIGHT TO A DE NOVO HEARING BEFORE THE WATER COURT TO ARGUE THAT AN ALTERNATE PLACE OF STORAGE INJURES THE PERSON'S WATER RIGHT.

(c) NOTHING IN THIS SUBSECTION (3) ALLOWS THE STORAGE OF WATER IN AN ALTERNATE PLACE OF STORAGE IF THAT WATER WAS IMPORTED FROM ANOTHER WATER DIVISION.

(d) OTHER THAN THE PLACE OF STORAGE, ALL OF THE TERMS AND CONDITIONS OF THE PREVIOUS CHANGE OF WATER RIGHT DECREE CONTINUE TO APPLY TO THE WATER RIGHT.

SECTION 2. In Colorado Revised Statutes, 37-92-103, **amend** the introductory portion and (5) as follows:

37-92-103. Definitions. AS used in this ~~article~~ ARTICLE 92, unless the context otherwise requires:

(5) "Change of water right":

(a) Means a change in the type, place, or time of use, a change in the point of diversion except as specified in section 37-86-111 (2), a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage EXCEPT AS SPECIFIED IN SECTION 37-87-101 (3), a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage to a fixed place of storage, or any combination of such changes; ~~The term "change of water right" AND~~

(b) Includes changes of conditional water rights as well as changes of water rights.

SECTION 3. Act subject to petition - effective date - applicability. (1) 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.

(2) This act applies to water diverted for storage on or after the applicable effective date of this act.

Approved: June 5, 2017