

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0369.01 Thomas Morris x4218

HOUSE BILL 20-1097

HOUSE SPONSORSHIP

Young and Arndt,

SENATE SPONSORSHIP

(None),

House Committees
Rural Affairs & Agriculture

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE ABILITY TO USE WATER THAT HAS BEEN
102 ADJUDICATED FOR MUNICIPAL USE IN AN INTERCONNECTED
103 TREATED MUNICIPAL WATER SUPPLY SYSTEM IF THE
104 HISTORICAL CONSUMPTIVE USE OF THE WATER RIGHT HAS
105 ALREADY BEEN QUANTIFIED IN A PREVIOUS CHANGE OF THE
106 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>.)

Current law limits the place of use of water subject to a changed

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

water right that has been decreed for use in a treated domestic or municipal water supply system to only that system. The bill authorizes the use of that water in an interconnected treated domestic or municipal water supply system if:

- ! The water is attributable to a water right for which the historical consumptive use has previously been quantified, diverted from a point of diversion that has already been decreed for that water right, and delivered from the decreed treated system to the interconnected treated system without the water being returned to the natural stream; and
- ! The owner of the water right has given written notice to the division engineer that identifies the proposed accounting for the use of the water right and the division engineer has approved the accounting.

The owner of the water right must give notice to all persons on the substitute water supply plan notification list for the applicable water division. The division engineer will review any comments received on the proposed accounting and make a determination whether the accounting is adequate. This determination may be appealed to the water judge. Other than the place of use, all of the terms and conditions of the previous change of water right decree continue to apply to the water right. A claim to any return flows from the use of the water right in the interconnected treated domestic or municipal water supply system must be approved by the water judge.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-92-312 as
3 follows:

4 **37-92-312. Use of previously changed municipal water rights**
5 **- definitions.** (1) SUBJECT TO ALL REQUIREMENTS SPECIFIED IN THIS
6 SECTION, WATER THAT MAY BE USED IN THE TREATED DOMESTIC OR
7 MUNICIPAL WATER SUPPLY SYSTEM FOR WHICH IT IS DECREED MAY ALSO
8 BE USED IN AN INTERCONNECTED SYSTEM IF:

9 (a) THE WATER IS:

10 (I) ATTRIBUTABLE TO A WATER RIGHT:

11 (A) THAT HAS BEEN DECREED FOR DOMESTIC OR MUNICIPAL

1 WATER SUPPLY USE; AND

2 (B) FOR WHICH A PREVIOUS CHANGE OF WATER RIGHT HAS BEEN
3 JUDICIALLY APPROVED AND THE HISTORICAL CONSUMPTIVE USE WAS
4 PREVIOUSLY QUANTIFIED;

5 (II) DIVERTED FROM A POINT OF DIVERSION THAT HAS ALREADY
6 BEEN DECREED FOR THAT WATER RIGHT; AND

7 (III) TREATED AND DELIVERED FROM THE DECREED TREATED
8 DOMESTIC OR MUNICIPAL WATER SUPPLY SYSTEM TO THE
9 INTERCONNECTED SYSTEM WITHOUT THE WATER BEING RETURNED TO THE
10 NATURAL STREAM; AND

11 (b) (I) BEFORE USING THE WATER IN AN INTERCONNECTED SYSTEM,
12 THE OWNER OF THE WATER RIGHT GIVES WRITTEN NOTICE BY FIRST-CLASS
13 MAIL OR ELECTRONIC MAIL TO THE DIVISION ENGINEER AND TO ALL
14 PARTIES WHO HAVE SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN
15 NOTIFICATION LIST, AS DESCRIBED IN SECTION 37-92-308 (6), FOR THE
16 WATER DIVISIONS IN WHICH THE WATER RIGHT IS LOCATED AND IN WHICH
17 IT WILL BE USED, IDENTIFYING THE WATER RIGHT, THE INTERCONNECTED
18 SYSTEM, THE DECREED POINT OF DIVERSION, AND HOW THE USE OF THE
19 WATER IN THE INTERCONNECTED SYSTEM WILL BE ACCOUNTED FOR; AND
20 ALL SUCH PARTIES HAVE THIRTY-FIVE DAYS AFTER THE DATE OF MAILING
21 OF THE NOTICE TO FILE COMMENTS ON THE ACCOUNTING FOR THE USE OF
22 THE WATER IN THE INTERCONNECTED SYSTEM; AND

23 (II) THE DIVISION ENGINEER, HAVING CONSIDERED COMMENTS
24 FROM PARTIES SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN
25 NOTIFICATION LIST FOR THE WATER DIVISIONS IN WHICH THE WATER RIGHT
26 IS LOCATED AND WILL BE USED, APPROVES THE ACCOUNTING FOR THE USE
27 OF THE WATER IN THE INTERCONNECTED SYSTEM.

1 (2) (a) ANY APPEAL OF A DECISION MADE BY THE DIVISION
2 ENGINEER CONCERNING THE ACCOUNTING FOR THE USE OF THE WATER IN
3 THE INTERCONNECTED SYSTEM MUST BE FILED WITH THE WATER JUDGE OF
4 THE APPLICABLE WATER DIVISION WITHIN THIRTY-FIVE DAYS AFTER THE
5 DATE OF SERVICE OF THE DECISION. THE WATER JUDGE SHALL HEAR AND
6 DETERMINE THE APPEAL ON AN EXPEDITED BASIS USING THE PROCEDURES
7 AND STANDARDS SET FORTH IN SECTIONS 37-92-304 AND 37-92-305 FOR
8 DETERMINATION OF MATTERS REREFERRED TO THE WATER JUDGE BY THE
9 REFEREE.

10 (b) NEITHER THE APPROVAL NOR THE DENIAL BY THE DIVISION
11 ENGINEER CREATES ANY PRESUMPTIONS, SHIFTS THE BURDEN OF PROOF, OR
12 SERVES AS A DEFENSE IN ANY LEGAL ACTION THAT MAY BE INITIATED
13 CONCERNING THE APPROVAL OR DENIAL.

14 (3) (a) OTHER THAN THE PLACE OF USE, ALL OF THE TERMS AND
15 CONDITIONS OF THE PREVIOUS CHANGE OF WATER RIGHT DECREE
16 CONTINUE TO APPLY TO THE WATER RIGHT.

17 (b) A CLAIM TO USE ANY RETURN FLOWS FROM THE USE OF THE
18 WATER RIGHT IN THE INTERCONNECTED SYSTEM THAT IS DIFFERENT FROM
19 WHAT HAS BEEN PREVIOUSLY DECREED MUST BE APPROVED BY THE WATER
20 JUDGE OF THE APPLICABLE WATER DIVISION.

21 (4) AS USED IN THIS SECTION:

22 (a) "INTERCONNECTED" MEANS HAVING SHARED INFRASTRUCTURE
23 OR SHARING ONE OR MORE POINTS OF PHYSICAL CONNECTION BETWEEN
24 THE TREATED DOMESTIC OR MUNICIPAL WATER SUPPLY SYSTEMS SO THAT
25 WATER THAT HAS BEEN DIVERTED FROM THE NATURAL STREAM AND THAT
26 HAS BEEN TREATED CAN BE DELIVERED FROM ONE SYSTEM TO ANOTHER
27 WITHOUT THE WATER BEING RETURNED TO THE NATURAL STREAM.

1 (b) "INTERCONNECTED SYSTEM" MEANS AN INTERCONNECTED
2 TREATED DOMESTIC OR MUNICIPAL WATER SUPPLY SYSTEM.

3 **SECTION 2.** In Colorado Revised Statutes, 37-92-103, **amend**
4 (5)(a) as follows:

5 **37-92-103. Definitions.** As used in this article 92, unless the
6 context otherwise requires:

7 (5) "Change of water right":

8 (a) Means a change in the type OF USE, place OF USE EXCEPT AS
9 SPECIFIED IN SECTION 37-92-312, or time of use; a change in the point of
10 diversion except as specified in section 37-86-111 (2); a change from a
11 fixed point of diversion to alternate or supplemental points of diversion;
12 a change from alternate or supplemental points of diversion to a fixed
13 point of diversion; a change in the means of diversion; a change in the
14 place of storage except as specified in section 37-87-101 (3); a change
15 from direct application to storage and subsequent application; a change
16 from storage and subsequent application to direct application; a change
17 from a fixed place of storage to alternate places of storage; a change from
18 alternate places of storage to a fixed place of storage; or any combination
19 of such changes; and

20 **SECTION 3. Act subject to petition - effective date -**
21 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
22 the expiration of the ninety-day period after final adjournment of the
23 general assembly (August 5, 2020, if adjournment sine die is on May 6,
24 2020); except that, if a referendum petition is filed pursuant to section 1
25 (3) of article V of the state constitution against this act or an item, section,
26 or part of this act within such period, then the act, item, section, or part
27 will not take effect unless approved by the people at the general election

1 to be held in November 2020 and, in such case, will take effect on the
2 date of the official declaration of the vote thereon by the governor.

3 (2) This act applies to conduct occurring on or after the applicable
4 effective date of this act.