

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

INTRODUCED

LLS NO. 21-0262.01 Jery Payne x2157

HOUSE BILL 21-1046

HOUSE SPONSORSHIP

Arndt and Catlin,

SENATE SPONSORSHIP

Fields and Sonnenberg,

House Committees

Agriculture, Livestock, & Water

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE USE OF A WATER RIGHT OBTAINED THROUGH A**
102 **MUTUAL DITCH CORPORATION.**

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>.)

For a mutual ditch corporation, the bill creates a presumption, which may be changed by changing the corporation's articles of incorporation or bylaws, that the shares of stock owned by a stockholder in the corporation represent:

- The right to use the water rights appropriated or purchased by the corporation; and

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.

- Corresponding rights to divert and deliver the stockholder's water rights through a ditch, canal, reservoir, or other works.

The bill also authorizes these water rights to be limited to a pro rata amount at times when shareholder demand exceeds available supply. A mutual ditch corporation may operate using traditional ditch operating practices.

The bill clarifies that:

- When a shareholder is not using some of or all of the available water under the shareholder's rights, the right to use the water rights does not include the right to prevent other stockholders from using any portion of the corporation's water rights; and
- The statutes covering ditch and reservoir companies do not prevent a stockholder from changing the use of the stockholder's shares or change the standards for water court approval to change a water right.

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

2 **SECTION 1.** In Colorado Revised Statutes, 7-42-101, **add** (4)
3 and (5) as follows:

4 **7-42-101. Additional statements in certificates - mutual ditch**
5 **corporation shares.** (4) UNLESS STATED OTHERWISE IN A MUTUAL DITCH
6 CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS:

7 (a) (I) THE SHARES OF STOCK OWNED BY A STOCKHOLDER IN THE
8 CORPORATION REPRESENT:

9 (A) THE RIGHT TO BENEFICIALLY USE THE DEFINITE AND SPECIFIC
10 WATER RIGHTS APPROPRIATED BY OR PURCHASED BY THE CORPORATION;
11 AND

12 (B) CORRESPONDING RIGHTS TO DIVERT AND DELIVER THE
13 STOCKHOLDER'S WATER RIGHTS THROUGH A DITCH, CANAL, RESERVOIR, OR
14 OTHER WORKS.

15 (II) THE RIGHTS LISTED IN SUBSECTION (4)(a)(I) OF THIS SECTION
16 MAY BE LIMITED TO A PRO RATA AMOUNT AT TIMES WHEN SHAREHOLDER

1 DEMAND EXCEEDS AVAILABLE SUPPLY.

2 (III) A MUTUAL DITCH CORPORATION MAY OPERATE USING
3 TRADITIONAL DITCH OPERATING PRACTICES, INCLUDING OPERATING IN
4 SECTIONS OR DELIVERY OF WATER BY ROTATION.

5 (b) WHEN THE OWNER OF MUTUAL DITCH CORPORATION SHARES
6 IS NOT TAKING DELIVERY OF SOME OF OR ALL OF THE AVAILABLE WATER
7 UNDER THE SHAREHOLDER'S RIGHTS, THE RIGHT TO BENEFICIALLY USE A
8 PORTION OF THE DEFINITE AND SPECIFIC WATER RIGHTS APPROPRIATED OR
9 PURCHASED BY THE CORPORATION DOES NOT INCLUDE THE RIGHT TO
10 PREVENT OTHER STOCKHOLDERS FROM USING ANY PORTION OF THE
11 CORPORATION'S WATER RIGHTS.

12 (5) A COURT SHALL NOT CONSTRUE THIS ARTICLE 42:

13 (a) TO PREVENT A STOCKHOLDER FROM CHANGING THE USE OF ITS
14 SHARES; OR

15 (b) TO AMEND OR MODIFY THE STANDARDS IN SECTION 37-92-305
16 FOR WATER COURT APPROVAL TO CHANGE A WATER RIGHT.

17 **SECTION 2. Act subject to petition - effective date.** This act
18 takes effect at 12:01 a.m. on the day following the expiration of the
19 ninety-day period after final adjournment of the general assembly; except
20 that, if a referendum petition is filed pursuant to section 1 (3) of article V
21 of the state constitution against this act or an item, section, or part of this
22 act within such period, then the act, item, section, or part will not take
23 effect unless approved by the people at the general election to be held in
24 November 2022 and, in such case, will take effect on the date of the
25 official declaration of the vote thereon by the governor.