

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0539.02 Sarah Lozano x3858

SENATE BILL 24-197

SENATE SPONSORSHIP

Roberts and Will,

HOUSE SPONSORSHIP

McCluskie,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES FOR THE CONSERVATION OF WATER IN THE
102 STATE, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE
103 PROPOSALS OF THE COLORADO RIVER DROUGHT TASK FORCE.

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>.)

Section 2 of the bill allows the owner of a decreed storage water right to loan water to the Colorado water conservation board (board) for a stream reach for which the board does not hold a decreed instream flow water right.

Current law requires the board to establish an agricultural water

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

protection program for water divisions 1 and 2. **Section 3** changes current law by requiring the board to establish an agricultural water protection program in each water division.

Current law allows periods of nonuse of a water right to be tolled in certain circumstances for the purposes of determining whether a water right is abandoned. **Section 4** changes current law by allowing a water right to be tolled for the duration that an electric utility that owns a water right in water division 6 decreases use of, or does not use, the water right if the decrease in use or nonuse occurs during the period beginning January 1, 2020, and ending December 31, 2050, and if the water right is owned by the electric utility since January 1, 2019.

Current law requires an owner of a conditional water right to obtain a finding of reasonable diligence or the conditional water right is considered abandoned. **Section 5** allows the water judge, in considering a finding of reasonable diligence for a conditional water right that is owned by an electric utility in water division 6 since January 2019, to consider the following as supporting evidence:

- The conditional water right may be used to support a specific project or potential future generation technologies or concepts that have the potential to advance progress toward Colorado's clean energy and greenhouse gas emission reduction goals; and
- The electric utility or another entity has made efforts to investigate or research the viability of future generation technologies that have the potential to advance progress toward Colorado's clean energy and greenhouse gas emission reduction goals.

In determining the amount of historical consumptive use for a water right, a water judge is prohibited from considering certain specified uses. **Section 6** prohibits the water judge from considering the decrease in use or nonuse of a water right owned by an electric utility in division 6 since January 1, 2019, which decrease in use or nonuse occurs during the period beginning January 1, 2019, and ending December 31, 2050, in determining the amount of historical consumptive use. If the water right is leased by the electric utility to a third party, the water right is not entitled to historical consumptive use protection for the period the water right is subject to the lease.

Current law allows the board to approve certain grants related to water conservation and requires the board to establish criteria to require the grant applicant to provide matching funds of at least 25%. **Section 7** allows the board to reduce or waive fund matching requirements in the case of a grant to the Ute Mountain Ute Tribe or the Southern Ute Indian Tribe.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Since 2000, the Colorado river basin, including the Colorado
5 river and its tributaries in Colorado, has experienced unprecedented
6 drought conditions that have contributed to decreased water supplies;

7 (b) Climate change, drier conditions, and depleted snowpack may
8 further reduce the water available in Colorado's surface streams for
9 beneficial uses and threaten Colorado's significant interests in the
10 Colorado river and its tributaries; and

11 (c) Dry hydrology continues to reduce water supplies across the
12 western slope of Colorado and the Colorado river basin and threatens the
13 security of available water resources.

14 (2) The general assembly further finds and declares that:

15 (a) Senate Bill 23-295, enacted in 2023, created the Colorado river
16 drought task force and a sub-task force related to tribal matters and tasked
17 those entities with proposing ideas and making recommendations to
18 address drought in the Colorado river basin;

19 (b) From July 2023 to December 2023, the task force and the
20 sub-task force met frequently across Colorado and, on December 15,
21 2023, published a report of the task force's and sub-task force's work,
22 topics of discussion, and recommendations;

23 (c) In the report, the task force and the sub-task force made
24 several recommendations and produced several narrative suggestions;

25 (d) Some of the recommendations and narrative suggestions do
26 not require statutory changes, as they relate to funding or federal policy;
27 and

1 (e) In addition, some of the recommendations and narrative
2 suggestions are being addressed in other legislation or efforts, such as the
3 annual water projects bill required pursuant to section 37-60-122 (1)(b),
4 Colorado Revised Statutes, and the long bill for the 2023-24 state fiscal
5 year.

6 (3) The general assembly therefore determines that it is in the best
7 interest of Colorado to adopt some of the recommendations and narrative
8 suggestions of the Colorado river drought task force and sub-task force
9 related to tribal matters in order to protect, promote, and bolster
10 Colorado's stake in the Colorado river and its tributaries.

11 **SECTION 2.** In Colorado Revised Statutes, 37-83-105, **amend**
12 (3) introductory portion; and **add** (1)(c) as follows:

13 **37-83-105. Owner may loan agricultural water right - loans to**
14 **Colorado water conservation board for instream flows - rules -**
15 **definition.** (1) (c) (I) NOTWITHSTANDING SUBSECTION (1)(b) OF THIS
16 SECTION, AN OWNER OF A DECREED STORAGE WATER RIGHT, IN ADDITION
17 TO LOANS MADE PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, MAY
18 LOAN WATER TO THE COLORADO WATER CONSERVATION BOARD TO
19 PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE
20 DEGREE FOR A STREAM REACH FOR WHICH THE BOARD DOES NOT HOLD A
21 DECREED INSTREAM FLOW WATER RIGHT, WHICH LOAN THE BOARD MAY
22 ACCEPT IN ACCORDANCE WITH SECTION 37-92-102, THIS SECTION, AND
23 ANY RULES ADOPTED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

24 (II) AS USED IN THIS SUBSECTION (1)(c), "STORAGE" HAS THE
25 MEANING SET FORTH IN SECTION 37-92-103.

26 (3) The Colorado water conservation board shall promulgate rules,
27 AS APPLICABLE, regarding the following necessary steps for its review and

1 acceptance of loans for instream flow use pursuant to ~~subsection~~
2 ~~(1)(b)(II)~~ SUBSECTIONS (1)(b)(II) AND (1)(c)(I) of this section:

3 **SECTION 3.** In Colorado Revised Statutes, 37-60-133, **amend**
4 (1)(a) as follows:

5 **37-60-133. Minimum criteria and guidelines for agricultural**
6 **water protection programs.** (1) (a) The board shall develop minimum
7 criteria and guidelines for the establishment of an agricultural water
8 protection program in EACH water division ~~1 or 2~~ pursuant to section
9 37-92-305 (19)(b)(IV)(B) to assure sufficient protection and monitoring
10 of agricultural water protection water rights pursuant to section 37-92-305
11 (19)(b)(III).

12 **SECTION 4.** In Colorado Revised Statutes, 37-92-103, **amend**
13 (2)(a) and (2)(b)(VI); and **add** (2)(c) and (7.3) as follows:

14 **37-92-103. Definitions.** As used in this article 92, unless the
15 context otherwise requires:

16 (2) "Abandonment of a water right" means the termination of a
17 water right in whole or in part as a result of the intent of the owner
18 thereof to discontinue permanently the use of all or part of the water
19 available thereunder. Any period of nonuse of any portion of a water right
20 shall be tolled, and no intent to discontinue permanent use shall be found
21 for purposes of determining an abandonment of a water right for the
22 duration that:

23 (a) The land on which the water right has been historically applied
24 is enrolled under a federal land conservation program; ~~or~~

25 (b) The nonuse of a water right by its owner is a result of
26 participation in:

27 (VI) Any contract or agreement with the Colorado water

1 conservation board that allows the board to use all or a part of a water
2 right to preserve or improve the natural environment to a reasonable
3 degree under section 37-92-102 (3); OR

4 (c) DURING THE PERIOD BEGINNING JANUARY 1, 2020, AND ENDING
5 DECEMBER 31, 2050, AN ELECTRIC UTILITY IN DIVISION 6 DECREASES USE
6 OF A WATER RIGHT, OR DOES NOT USE A WATER RIGHT, IF THE ELECTRIC
7 UTILITY HAS OWNED THE WATER RIGHT SINCE JANUARY 1, 2019.

8 (7.3) "ELECTRIC UTILITY" MEANS A QUALIFYING RETAIL UTILITY,
9 AS DEFINED IN SECTION 40-2-125.5 (2)(c), OR A WHOLESALE GENERATION
10 AND TRANSMISSION ELECTRIC COOPERATIVE SUBJECT TO SECTION
11 25-7-105 (1)(e)(VIII)(I).

12 **SECTION 5.** In Colorado Revised Statutes, 37-92-301, **add**
13 (4)(a)(I.5) as follows:

14 **37-92-301. Administration and distribution of waters.**

15 (4) (a) (I.5) IF AN APPLICATION DESCRIBED IN SUBSECTION (4)(a)(I) OF
16 THIS SECTION FILED ON OR BEFORE DECEMBER 31, 2050, SEEKS A FINDING
17 OF REASONABLE DILIGENCE FOR A CONDITIONAL WATER RIGHT THAT IS
18 OWNED BY AN ELECTRIC UTILITY IN DIVISION 6 SINCE JANUARY 1, 2019,
19 THE WATER JUDGE MAY CONSIDER THE FOLLOWING AS SUPPORTING
20 EVIDENCE FOR A FINDING OF REASONABLE DILIGENCE:

21 (A) THE CONDITIONAL WATER RIGHT MAY BE USED TO SUPPORT A
22 SPECIFIC PROJECT OR POTENTIAL FUTURE GENERATION TECHNOLOGIES OR
23 CONCEPTS THAT HAVE THE POTENTIAL TO ADVANCE PROGRESS TOWARD
24 COLORADO'S CLEAN ENERGY AND GREENHOUSE GAS EMISSION REDUCTION
25 GOALS; AND

26 (B) THE ELECTRIC UTILITY HAS MADE EFFORTS TO DEVELOP THE
27 WATER RIGHT WITH REASONABLE DILIGENCE, WHICH MAY INCLUDE

1 EFFORTS MADE BY THE ELECTRIC UTILITY OR ANOTHER ENTITY IN THE
2 ELECTRIC GENERATION AND DISTRIBUTION INDUSTRY OR A RELATED
3 RESEARCH INDUSTRY TO INVESTIGATE THE TECHNICAL OR COMMERCIAL
4 VIABILITY OF FUTURE GENERATION TECHNOLOGIES OR CONCEPTS THAT
5 HAVE THE POTENTIAL TO ADVANCE PROGRESS TOWARD COLORADO'S
6 CLEAN ENERGY AND GREENHOUSE GAS EMISSION REDUCTION GOALS.

7 **SECTION 6.** In Colorado Revised Statutes, 37-92-305, **amend**
8 (3)(c)(I) and (3)(c)(II)(D); and **add** (3)(c)(III) as follows:

9 **37-92-305. Standards with respect to rulings of the referee and**
10 **decisions of the water judge - definitions.** (3) (c) In determining the
11 amount of historical consumptive use for a water right in division 1, 2, 3,
12 4, 5, or 6, the water judge shall not consider any decrease in use resulting
13 from the following:

14 (I) The land on which the water from the water right has been
15 historically applied is enrolled under a federal land conservation program;
16 **or**

17 (II) The nonuse or decrease in use of the water from the water
18 right by its owner for a maximum of five years in any consecutive
19 ten-year period as a result of participation in:

20 (D) A water banking program as provided by law; OR

21 (III) THE DECREASE IN USE OR NONUSE OF A WATER RIGHT OWNED
22 BY AN ELECTRIC UTILITY IN DIVISION 6 SINCE JANUARY 1, 2019, THAT
23 OCCURS DURING THE PERIOD BEGINNING JANUARY 1, 2019, AND ENDING
24 DECEMBER 31, 2050; EXCEPT THAT ANY WATER RIGHT, OR PORTION OF A
25 WATER RIGHT, THAT IS LEASED BY THE ELECTRIC UTILITY TO A THIRD
26 PARTY IS NOT ENTITLED TO HISTORICAL CONSUMPTIVE USE PROTECTION
27 PURSUANT TO THIS SECTION FOR THE PERIOD THAT THE WATER RIGHT, OR

1 PORTION OF THE WATER RIGHT, IS SUBJECT TO THE LEASE.

2 **SECTION 7.** In Colorado Revised Statutes, 37-60-106.3, **amend**
3 (6)(c) as follows:

4 **37-60-106.3. State water plan - legislative declaration - grant**
5 **program. (6) Water plan implementation grant program.** The board
6 may approve grants pursuant to the following requirements:

7 (c) The board shall establish criteria that require matching funds
8 of at least twenty-five percent; except that:

9 (I) The board may award grants in 2021 and 2022 with reduced
10 matching fund requirements; AND

11 (II) IN THE CASE OF A GRANT TO THE UTE MOUNTAIN UTE TRIBE
12 OR THE SOUTHERN UTE INDIAN TRIBE, INCLUDING ALL SUBDIVISIONS OR
13 SUBSIDIARIES OF, AND BUSINESS ENTERPRISES WHOLLY OWNED BY, EITHER
14 TRIBE, THE BOARD MAY REDUCE OR WAIVE FUND MATCHING
15 REQUIREMENTS.

16 **SECTION 8. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly; except
19 that, if a referendum petition is filed pursuant to section 1 (3) of article V
20 of the state constitution against this act or an item, section, or part of this
21 act within such period, then the act, item, section, or part will not take
22 effect unless approved by the people at the general election to be held in
23 November 2024 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.