

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 24-0539.02 Sarah Lozano x3858

SENATE BILL 24-197

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Senate Committees

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HOUSE
3rd Reading Unamended
May 3, 2024

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.**

HOUSE
2nd Reading Unamended
May 2, 2024

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>.)

SENATE
Amended 3rd Reading
April 17, 2024

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

SENATE
Amended 2nd Reading
April 15, 2024

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;

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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 2024-25 state fiscal
5 year; and

6 (f) The protections provided to electric utility water rights in
7 sections 4, 5, and 6 of the bill are for the benefit of the entire Yampa river
8 basin water resources, in particular during low-flow conditions that have
9 resulted in the administration of a call on the Yampa river in recent years.
10 The nondiversion or nonuse will provide a benefit to all water use sectors,
11 balancing multiple beneficial uses of water on the Yampa river system.

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

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

19 **37-83-105. Owner may loan agricultural water right - loans to**
20 **Colorado water conservation board for instream flows - rules -**
21 **definition.** (1) (c) (I) NOTWITHSTANDING SUBSECTION (1)(b) OF THIS
22 SECTION, AN OWNER OF A DECREED STORAGE WATER RIGHT, IN ADDITION
23 TO LOANS MADE PURSUANT TO SUBSECTION (1)(b) OF THIS SECTION, MAY
24 LOAN WATER TO THE COLORADO WATER CONSERVATION BOARD TO
25 PRESERVE OR IMPROVE THE NATURAL ENVIRONMENT TO A REASONABLE
26 DEGREE FOR A STREAM REACH FOR WHICH THE BOARD DOES NOT HOLD A
27 DECREED INSTREAM FLOW WATER RIGHT, WHICH LOAN THE BOARD MAY

1 ACCEPT IN ACCORDANCE WITH SECTION 37-92-102, THIS SECTION, AND
2 ANY RULES ADOPTED PURSUANT TO SUBSECTION (3) OF THIS SECTION.

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

5 (3) The Colorado water conservation board shall promulgate rules,
6 AS APPLICABLE, regarding the following necessary steps for its review and
7 acceptance of loans for instream flow use pursuant to ~~subsection~~
8 ~~(1)(b)(II)~~ SUBSECTIONS (1)(b)(II) AND (1)(c)(I) of this section:

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

11 **37-60-133. Minimum criteria and guidelines for agricultural**
12 **water protection programs.** (1) (a) The board shall develop minimum
13 criteria and guidelines for the establishment of an agricultural water
14 protection program in EACH water division ~~1 or 2~~ pursuant to section
15 37-92-305 (19)(b)(IV)(B) to assure sufficient protection and monitoring
16 of agricultural water protection water rights pursuant to section 37-92-305
17 (19)(b)(III).

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

20 **37-92-103. Definitions.** As used in this article 92, unless the
21 context otherwise requires:

22 (2) "Abandonment of a water right" means the termination of a
23 water right in whole or in part as a result of the intent of the owner
24 thereof to discontinue permanently the use of all or part of the water
25 available thereunder. Any period of nonuse of any portion of a water right
26 shall be tolled, and no intent to discontinue permanent use shall be found
27 for purposes of determining an abandonment of a water right for the

1 duration that:

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

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

6 (VI) Any contract or agreement with the Colorado water
7 conservation board that allows the board to use all or a part of a water
8 right to preserve or improve the natural environment to a reasonable
9 degree under section 37-92-102 (3); OR

10 (c) SUBJECT TO SECTION 37-92-305 (3)(f), DURING THE PERIOD
11 BEGINNING JANUARY 1, 2020, AND ENDING DECEMBER 31, 2050, AN
12 ELECTRIC UTILITY IN DIVISION 6 DECREASES USE OF A WATER RIGHT, OR
13 DOES NOT USE A WATER RIGHT, IF THE ELECTRIC UTILITY HAS OWNED THE
14 WATER RIGHT SINCE JANUARY 1, 2019.

15 (7.3) "ELECTRIC UTILITY" MEANS A QUALIFYING RETAIL UTILITY,
16 AS DEFINED IN SECTION 40-2-125.5 (2)(c), OR A WHOLESALE GENERATION
17 AND TRANSMISSION ELECTRIC COOPERATIVE SUBJECT TO SECTION
18 25-7-105 (1)(e)(VIII)(I).

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

21 **37-92-301. Administration and distribution of waters.**

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

1 (A) THE CONDITIONAL WATER RIGHT MAY BE USED TO SUPPORT A
2 SPECIFIC PROJECT OR POTENTIAL FUTURE GENERATION TECHNOLOGIES OR
3 CONCEPTS THAT HAVE THE POTENTIAL TO ADVANCE PROGRESS TOWARD
4 COLORADO'S CLEAN ENERGY AND GREENHOUSE GAS EMISSION REDUCTION
5 GOALS; AND

6 (B) THE ELECTRIC UTILITY HAS MADE EFFORTS TO DEVELOP THE
7 WATER RIGHT WITH REASONABLE DILIGENCE, WHICH MAY INCLUDE
8 EFFORTS MADE BY THE ELECTRIC UTILITY OR ANOTHER ENTITY IN THE
9 ELECTRIC GENERATION AND DISTRIBUTION INDUSTRY OR A RELATED
10 RESEARCH INDUSTRY TO INVESTIGATE THE TECHNICAL OR COMMERCIAL
11 VIABILITY OF FUTURE GENERATION TECHNOLOGIES OR CONCEPTS THAT
12 HAVE THE POTENTIAL TO ADVANCE PROGRESS TOWARD COLORADO'S
13 CLEAN ENERGY AND GREENHOUSE GAS EMISSION REDUCTION GOALS.

14 **SECTION 6.** In Colorado Revised Statutes, 37-92-305, **amend**
15 (3)(c)(I), (3)(c)(II)(D), (19)(a)(I), and (19)(c) introductory portion; and
16 **add (3)(c)(III) and (3)(f)** as follows:

17 **37-92-305. Standards with respect to rulings of the referee and**
18 **decisions of the water judge - definitions.** (3) (c) In determining the
19 amount of historical consumptive use for a water right in division 1, 2, 3,
20 4, 5, or 6, the water judge shall not consider any decrease in use resulting
21 from the following:

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

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

1 (D) A water banking program as provided by law; OR
2 (III) SUBJECT TO SUBSECTION (3)(f) OF THIS SECTION, THE
3 DECREASE IN USE OR NONUSE OF A WATER RIGHT OWNED BY AN ELECTRIC
4 UTILITY IN DIVISION 6 SINCE JANUARY 1, 2019, THAT OCCURS DURING THE
5 PERIOD BEGINNING JANUARY 1, 2019, AND ENDING DECEMBER 31, 2050;
6 EXCEPT THAT ANY WATER RIGHT, OR PORTION OF A WATER RIGHT, THAT IS
7 LEASED OR LOANED BY THE ELECTRIC UTILITY TO A THIRD PARTY IS NOT
8 ENTITLED TO HISTORICAL CONSUMPTIVE USE PROTECTION PURSUANT TO
9 THIS SECTION FOR THE PERIOD THAT THE WATER RIGHT, OR PORTION OF
10 THE WATER RIGHT, IS SUBJECT TO THE LEASE OR LOAN.

11 (f) (I) TO QUALIFY FOR HISTORICAL CONSUMPTIVE USE
12 PROTECTION PURSUANT TO SUBSECTION (3)(c)(III) OF THIS SECTION OR TO
13 QUALIFY FOR THE EXCEPTION TO ABANDONMENT PURSUANT TO SECTION
14 37-92-103 (2)(c), AN ELECTRIC UTILITY THAT MANAGES ALL UNITS OF A
15 GENERATING STATION IN DIVISION 6 SHALL, FOR ITSELF AND ON BEHALF OF
16 THE OTHER OWNERS OF THE GENERATING STATION, FILE WITH THE
17 DIVISION 6 WATER COURT AN APPLICATION SEEKING QUANTIFICATION OF
18 THE HISTORICAL CONSUMPTIVE USE FOR THE ABSOLUTE DIRECT FLOW
19 WATER RIGHTS SERVING THE GENERATING STATION. THE APPLICATION
20 MUST BE FILED WITH THE DIVISION 6 WATER COURT WITHIN ONE YEAR
21 AFTER THE DATE THAT THE FINAL UNIT OF THE GENERATING STATION IS
22 TAKEN OFFLINE.

23 (II) THE APPLICATION DESCRIBED IN SUBSECTION (3)(f)(I) OF THIS
24 SECTION IS A CLAIM FOR A DETERMINATION OF A WATER RIGHT, AND THE
25 DIVISION 6 WATER COURT HAS JURISDICTION TO DETERMINE THE
26 HISTORICAL CONSUMPTIVE USE FOR THE ABSOLUTE DIRECT FLOW WATER
27 RIGHTS SERVING THE GENERATING STATION IN ACCORDANCE WITH THIS

1 SECTION USING THE STANDARDS AND PROCEDURES SET FORTH IN SECTIONS
2 37-92-302, 37-92-303, AND 37-92-304 AND THIS SECTION, INCLUDING
3 STANDARDS AND PROCEDURES RELATED TO NOTICE AND PARTICIPATION
4 OF OPPOSERS; EXCEPT THAT A CHANGE OF WATER RIGHT IS NOT REQUIRED
5 AS A PREREQUISITE FOR THE QUANTIFICATION OF THE HISTORICAL
6 CONSUMPTIVE USE BY THE DIVISION 6 WATER COURT. IF THE DIVISION 6
7 WATER COURT ENTERS A DECREE QUANTIFYING THE HISTORICAL
8 CONSUMPTIVE USE, SUBSECTION (3)(e) OF THIS SECTION APPLIES TO THE
9 ABSOLUTE DIRECT FLOW WATER RIGHTS.

10 (III) THE QUANTIFICATION OF THE HISTORICAL CONSUMPTIVE USE
11 BY THE DIVISION 6 WATER COURT DESCRIBED IN THIS SUBSECTION (3)(f)
12 MAY BE USED IN A PROCEEDING TO CHANGE THE WATER RIGHT IF AND
13 ONLY IF THE WATER RIGHT SUBJECT TO THE CHANGE WILL NOT BE
14 DIVERTED TO ANY LOCATION EAST OF THE CONTINENTAL DIVIDE OR SOLD
15 FOR USE OUTSIDE OF THE STATE OF COLORADO.

16 (19) **Agricultural water protection - definitions.** (a) (I) After
17 the state engineer's proposed rules promulgated under section 37-80-123
18 are reviewed and finalized pursuant to section 37-80-123 (1)(c) and after
19 the Colorado water conservation board has finalized the criteria and
20 guidelines developed pursuant to section 37-60-133, the owner of an
21 absolute decreed irrigation water right in water division 1 or 2 used for
22 agricultural purposes may apply in water court to change the use of the
23 water right to an agricultural water protection water right. A water right
24 decreed in water division 3, 4, 5, 6, or 7 is not eligible for a change in
25 water right to an agricultural water protection water right. As used in this
26 section, an "agricultural water protection water right" means a water right
27 decreed to allow the lease, loan, or trade of up to fifty percent of the water

1 subject to the water right.

2 (c) As used in this subsection (19), an "eligible entity" means an
3 entity in water division 1 or 2 that:

4 **SECTION 7.** In Colorado Revised Statutes, 37-92-308, **amend**
5 (12)(a) as follows:

6 **37-92-308. Substitute water supply plans - special procedures**
7 **for review - water adjudication cash fund - legislative declaration.**

8 (12) **Agricultural water protection.** (a) After a person has obtained a
9 decreed agricultural water protection water right pursuant to section
10 37-92-305 (19), which water right is available only in water division 1 or
11 2, the person may apply for a substitute water supply plan pursuant to this
12 subsection (12).

13 **SECTION 8.** In Colorado Revised Statutes, 37-60-106.3, **amend**
14 (6)(c) as follows:

15 **37-60-106.3. State water plan - legislative declaration - grant**
16 **program. (6) Water plan implementation grant program.** The board
17 may approve grants pursuant to the following requirements:

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

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

22 (II) IN THE CASE OF A GRANT TO THE UTE MOUNTAIN UTE TRIBE
23 OR THE SOUTHERN UTE INDIAN TRIBE, INCLUDING ALL SUBDIVISIONS OR
24 SUBSIDIARIES OF, AND BUSINESS ENTERPRISES WHOLLY OWNED BY, EITHER
25 TRIBE, THE BOARD SHALL REDUCE OR WAIVE FUND MATCHING
26 REQUIREMENTS.

27 **SECTION 9.** Act subject to petition - effective date. This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly; except
3 that, if a referendum petition is filed pursuant to section 1 (3) of article V
4 of the state constitution against this act or an item, section, or part of this
5 act within such period, then the act, item, section, or part will not take
6 effect unless approved by the people at the general election to be held in
7 November 2024 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor.