

CHAPTER 107

WATER AND IRRIGATION

SENATE BILL 13-074

BY SENATOR(S) Hodge, Baumgardner, Brophy, Giron, Roberts, Guzman, Jahn, Nicholson, Schwartz, Tochtrop;
also REPRESENTATIVE(S) Sonnenberg, Fischer, McLachlan, Rosenthal, Vigil.

AN ACT

**CONCERNING THE RESOLUTION OF AMBIGUITIES IN OLD WATER RIGHT DECREES REGARDING THE
PLACE OF USE OF IRRIGATION WATER.**

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

SECTION 1. In Colorado Revised Statutes, 37-92-305, **amend** (4) (a) (I) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (4) (a) Terms and conditions to prevent injury as specified in subsection (3) of this section may include:

(I) (A) A limitation on the use of the water that is subject to the change, taking into consideration the historical use and the flexibility required by annual climatic differences.

(B) FOR PURPOSES OF DETERMINING LAWFUL HISTORICAL USE, IF A DECREE ENTERED BEFORE JANUARY 1, 1937, ESTABLISHES AN IRRIGATION WATER RIGHT AND DOES NOT EXPRESSLY LIMIT THE NUMBER OF ACRES THAT THE APPROPRIATOR MAY IRRIGATE UNDER THE WATER RIGHT, THE LAWFUL MAXIMUM AMOUNT OF IRRIGATED ACREAGE EQUALS THE MAXIMUM AMOUNT OF ACREAGE IRRIGATED IN COMPLIANCE WITH ALL EXPRESS PROVISIONS OF THE DECREE DURING THE FIRST FIFTY YEARS AFTER ENTRY OF THE ORIGINAL DECREE, UNLESS A COURT OF COMPETENT JURISDICTION HAS ENTERED A FINAL JUDGMENT TO THE CONTRARY. IRRIGATED ACREAGE NOT EXCEEDING THE LAWFUL MAXIMUM AMOUNT AND LOCATED WITHIN A REASONABLE PROXIMITY TO THE DITCH, INCLUDING EXTENSIONS AND LATERAL DELIVERY INFRASTRUCTURE, AS CONSTRUCTED WITHIN THE FIRST FIFTY-YEAR PERIOD AFTER ENTRY OF THE ORIGINAL DECREE, MAY BE INCLUDED IN THE HISTORICAL AVERAGE IN AN HISTORICAL CONSUMPTIVE USE ANALYSIS SUPPORTING

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

A CHANGE OF WATER RIGHT APPLICATION.

SECTION 2. In Colorado Revised Statutes, 37-92-503, **add (9)** as follows:

37-92-503. Enforcement - injunction. (9) IN THE CASE OF AN ACTION INITIATED BY THE STATE ENGINEER OR ANOTHER PERSON ALLEGING EXPANDED OR UNLAWFUL USE OF A WATER RIGHT DECREED FOR IRRIGATION, THE LAWFUL MAXIMUM AMOUNT OF IRRIGATED ACREAGE FOR A DECREE ENTERED BEFORE JANUARY 1, 1937, THAT ESTABLISHES AN IRRIGATION WATER RIGHT AND DOES NOT EXPRESSLY LIMIT THE NUMBER OF ACRES THAT THE APPROPRIATOR MAY IRRIGATE UNDER THE WATER RIGHT EQUALS THE MAXIMUM AMOUNT OF ACREAGE IRRIGATED IN COMPLIANCE WITH THE EXPRESS PROVISIONS OF THE DECREE DURING THE FIRST FIFTY YEARS AFTER THE ENTRY OF THE ORIGINAL DECREE, UNLESS A COURT OF COMPETENT JURISDICTION HAS ENTERED A FINAL JUDGMENT TO THE CONTRARY. IRRIGATION OF ACREAGE NOT EXCEEDING THE LAWFUL MAXIMUM AMOUNT AND LOCATED WITHIN A REASONABLE PROXIMITY TO THE DITCH, INCLUDING EXTENSIONS AND LATERAL DELIVERY INFRASTRUCTURE, AS CONSTRUCTED WITHIN THE FIRST FIFTY-YEAR PERIOD AFTER ENTRY OF THE ORIGINAL DECREE IS DEEMED LAWFUL FOR CONTINUED IRRIGATION UNDER THE WATER RIGHT.

SECTION 3. Act subject to petition - effective date. 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 7, 2013, if adjournment sine die is on May 8, 2013); 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 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 4, 2013