

## CHAPTER 161

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**WATER AND IRRIGATION**

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**HOUSE BILL 21-1046**

BY REPRESENTATIVE(S) Arndt and Catlin, Bennett, Bird, Bockenfeld, Cutter, Esgar, Exum, Gonzales-Gutierrez, Gray, Hooton, Lontine, McCluskie, McCormick, McKean, McLachlan, Mullica, Ortiz, Pico, Rich, Roberts, Soper, Titone, Valdez D., Woodrow, Young;  
also SENATOR(S) Fields and Sonnenberg, Bridges, Cooke, Coram, Gardner, Hisey, Holbert, Jaquez Lewis, Kirkmeyer, Lee, Liston, Lundeen, Priola, Rankin, Scott, Simpson, Smallwood, Woodward, Garcia.

**AN ACT**

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

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

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

**7-42-101. Additional statements in certificates - mutual ditch corporation shares.** (4) (a) SUBJECT TO ANY DECREE FOR THE WATER RIGHTS HELD IN THE NAME OF A MUTUAL DITCH CORPORATION AND TO A MUTUAL DITCH CORPORATION'S ARTICLES OF INCORPORATION OR BYLAWS, A MUTUAL DITCH CORPORATION DELIVERING DIRECT FLOW WATER RIGHTS MAY PROVIDE WATER TO ONLY WATER-REQUESTING STOCKHOLDERS, INCLUDING STOCKHOLDERS THAT OWN SHARES FOR WHICH A CHANGE IN USE HAS BEEN ADJUDICATED OR APPROVED. CONSISTENT WITH EACH STOCKHOLDER'S REQUEST AND THE AVAILABLE WATER SUPPLY, A MUTUAL DITCH CORPORATION MAY PROVIDE WATER AT RATES OF FLOW GREATER OR LESS THAN EACH STOCKHOLDER'S PRO-RATA OWNERSHIP OF SHARES IN THE CORPORATION. WHEN TOTAL STOCKHOLDER DEMAND EXCEEDS AVAILABLE WATER SUPPLY, A MUTUAL DITCH CORPORATION SHALL PROVIDE, TO THE EXTENT POSSIBLE, A PRO RATA AMOUNT OF WATER TO ALL STOCKHOLDERS THAT ARE REQUESTING WATER, EITHER SIMULTANEOUSLY OR, IF NECESSARY, BY ROTATING AMONG STOCKHOLDERS IN SECTIONS OR BY OTHER EQUITABLE METHODS AS DETERMINED BY THE CORPORATION.

(b) SUBJECT TO SUBSECTION (4)(c)(IV) OF THIS SECTION, IF A WATER COURT DECREE AUTHORIZING THE CHANGE IN USE OF THE WATER RIGHTS REPRESENTED BY MUTUAL DITCH CORPORATION SHARES CONTAINS VOLUMETRIC LIMITS ON THE

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

AMOUNT OF WATER DELIVERABLE TO THE CHANGED SHARES, WATER DIVERTED AND DELIVERED BY THE MUTUAL DITCH CORPORATION ONLY COUNTS AGAINST THE CHANGED STOCKHOLDER'S VOLUMETRIC LIMITS IF THE STOCKHOLDER, OR ITS LESSEE OR DESIGNEE, TAKES DELIVERY IN ACCORDANCE WITH THE CHANGE IN USE DECREE.

(c) A COURT SHALL NOT CONSTRUE THIS SUBSECTION (4):

(I) (A) TO SUPERSEDE OR ABROGATE THE CONDITIONS OF ANY FINAL WATER COURT DECREE ENTERED BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (4); OR

(B) TO APPLY TO ANY WATER COURT APPLICATION FOR WHICH A TRIAL WAS HELD BEFORE THE EFFECTIVE DATE OF THIS SUBSECTION (4) OR TO AN APPEAL OF ANY WATER COURT DECISION OR DECREE RESULTING FROM SUCH A TRIAL;

(II) TO IMPEDE OR PREVENT A STOCKHOLDER FROM CHANGING THE TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE WATER RIGHTS REPRESENTED BY THE SHARES IN A MUTUAL DITCH CORPORATION;

(III) TO REQUIRE OR PROHIBIT A REDUCTION IN THE FLOW RATE AVAILABLE TO A STOCKHOLDER OR MUTUAL DITCH CORPORATION WHEN THE TYPE OF, PLACE OF, TIME OF USE OF, OR POINT OF DIVERSION OF THE WATER RIGHTS REPRESENTED BY THE SHARES IS LAWFULLY CHANGED;

(IV) (A) TO AMEND OR MODIFY THE STANDARDS IN SECTION 37-92-305 FOR WATER COURT APPROVAL OF A CHANGE IN USE; OR

(B) TO AMEND OR MODIFY THE COURT'S ABILITY TO ORDER CONDITIONS NECESSARY TO PREVENT AN ENLARGEMENT UPON THE HISTORICAL USE OF WATER RIGHTS FOR WHICH A CHANGE IS SOUGHT OR TO PREVENT A DIMINUTION OF RETURN FLOW HISTORICALLY RESULTING FROM THE USE OF THE CHANGED SHARES TO THE DETRIMENT OF OTHER APPROPRIATORS; OR

(V) TO IMPAIR THE ABILITY OF A STOCKHOLDER TO ENTER INTO A PROGRAM IDENTIFIED IN SECTION 37-92-305 (3)(c) OR TO ENTER INTO AN ACQUISITION TRANSACTION PROVIDED FOR IN EITHER SECTION 37-92-102 (3) OR 37-83-105.

**SECTION 2. 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; 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 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 20, 2021