

CHAPTER 168

**WATER AND IRRIGATION**

**HOUSE BILL 09-1233**

BY REPRESENTATIVE(S) Vigil, Court, Curry, Fischer, Frangas, Hullinghorst, Labuda, Looper, McNulty, Merrifield, Pace, Tipton;  
also SENATOR(S) Schwartz, Bacon, Foster, Gibbs, Groff, Heath, Hodge, Newell, Romer, Sandoval, Tapia.

**AN ACT**

**CONCERNING THE RECOGNITION OF ACEQUIAS, AND, IN CONNECTION THEREWITH, AUTHORIZING ACEQUIA DITCH CORPORATIONS.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds that:

(a) The first nonnative Americans to settle in Colorado were Hispanics from colonial Mexico, who brought with them their ancient irrigation practices based on a community ditch called an "acequia", pursuant to which water was treated as a community resource and allocated based upon equity and need rather than priority of appropriation;

(b) Colorado's territorial session laws from 1868, 1872, and 1874 recognized the validity of acequias within the counties of Costilla, Conejos, Huerfano, and Las Animas, including the requirement for irrigators to contribute labor to the upkeep of the acequia and a preference over other diversions for acequias' diversions regardless of priority;

(c) As the general assembly recognized in the following excerpt from Senate Joint Resolution 02-028, the continued operation of these historic acequias is an "essential foundation for the sustenance of the local economy":

"WHEREAS, Spanish American settlers founded the Town of San Luis in the Culebra Valley in 1852, thus making it the oldest town in Colorado; and

"WHEREAS, In keeping with their ancestors' acequias tradition, these settlers

---

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

quickly initiated an irrigation system; and

"WHEREAS, The oldest water right in Colorado is attributed to the San Luis People's Ditch, with a priority date of April 10, 1852, in the amount of 21 cubic feet per second from Culebra Creek in Costilla County; and

"WHEREAS, Originally, the land adjacent to the Ditch was divided into strips approximately 100 yards wide and 16 to 20 miles long, allowing settlers to have irrigated farmland near the Ditch and also to have access to range and timber land, and today, the Ditch is 4 miles long and irrigates 1,600 acres of farmland; and

"WHEREAS, The San Luis People's Ditch has been continuously operated for irrigation purposes for 150 years, thus making it an essential foundation for the sustenance of the local economy; . . ."

(d) Upon adoption of Colorado's constitution, the prior appropriation system became the law governing water allocation; and

(e) The prior appropriation system is, in fundamental ways, inconsistent with the community-based principles upon which acequias were founded.

(2) The general assembly hereby determines that:

(a) Notwithstanding the constitutional establishment of the prior appropriation system, communities that were historically served by an acequia have used informal methods to continue to allocate water based upon equity in addition to priority and to treat water as a community resource; and

(b) Recognition by the general assembly of the continuing existence and use of acequias, while continuing to comply with the constitutional requirements of priority administration of tributary water, is critical to preserving the historic value that acequias provide to the communities in which they are located.

(3) The general assembly hereby declares that the purpose of this act is to promote and encourage the continued operation of acequias and the viability of the historic communities that depend on those acequias.

**SECTION 2.** Article 42 of title 7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**7-42-101.5. Acequia mutual ditch - definition - powers.** (1) FOR PURPOSES OF THIS SECTION, "ACEQUIA" MEANS A DITCH THAT:

(a) ORIGINATED PRIOR TO COLORADO'S STATEHOOD;

(b) HAS HISTORICALLY TREATED WATER DIVERTED BY THE ACEQUIA AS A COMMUNITY RESOURCE AND HAS THEREFORE ATTEMPTED TO ALLOCATE WATER IN THE ACEQUIA BASED UPON EQUITY IN ADDITION TO PRIORITY;

(c) RELIES ESSENTIALLY ON GRAVITY-FED SURFACE WATER DIVERSIONS;

(d) SUPPLIES IRRIGATION WATER TO LONG LOTS THAT ARE PERPENDICULAR TO THE STREAM OR DITCH TO MAXIMIZE THE NUMBER OF LANDOWNERS WHO HAVE ACCESS TO WATER;

(e) HAS HISTORICALLY BEEN OPERATED PURSUANT TO A ONE LANDOWNER-ONE VOTE SYSTEM; AND

(f) HAS HISTORICALLY RELIED ON LABOR SUPPLIED BY THE OWNERS OF IRRIGATED LAND SERVED BY THE ACEQUIA.

(2) SUBJECT TO ANY CONTRARY PROVISION OF SUBSECTION (3) OF THIS SECTION, THE PROCEDURAL AND SUBSTANTIVE REQUIREMENTS OF THIS ARTICLE OTHER THAN THIS SECTION THAT APPLY TO THE CREATION, POWERS, DUTIES, AND GOVERNANCE OF A DITCH CORPORATION SUBJECT TO THIS ARTICLE SHALL BE DEEMED TO APPLY TO THE CREATION, POWERS, DUTIES, AND GOVERNANCE OF AN ACEQUIA DITCH CORPORATION.

(3) AN ACEQUIA DITCH CORPORATION MAY BE ORGANIZED PURSUANT TO THIS ARTICLE, AND A DITCH CORPORATION ORGANIZED PURSUANT TO THIS ARTICLE MAY CONVERT TO AN ACEQUIA DITCH CORPORATION, IF:

(a) AT LEAST TWO-THIRDS OF THE IRRIGATED LAND SERVED BY THE DITCH IS PLATTED OR ORGANIZED INTO LONG LOTS, THE LONGEST AXES OF WHICH ARE PERPENDICULAR TO THE STREAM OR DITCH;

(b) SURFACE WATER RIGHTS PROVIDE ALL OF THE WATER RIGHTS USED FOR IRRIGATION IN THE DITCH, AND SUCH WATER RIGHTS HAVE HAD SUBSTANTIALLY UNINTERRUPTED USE SINCE BEFORE COLORADO'S STATEHOOD;

(c) THE IRRIGATED LAND SERVED BY THE DITCH IS LOCATED WHOLLY IN ONE OR MORE OF THE COUNTIES OF COSTILLA, CONEJOS, HUERFANO, AND LAS ANIMAS; AND

(d) AS REQUIRED PURSUANT TO SECTION 7-42-101, THE STOCKHOLDERS OF THE DITCH FILE ARTICLES OF INCORPORATION, OR AN AMENDMENT TO THE ARTICLES OF INCORPORATION, THAT STATE THE STOCKHOLDERS' INTENTION TO CREATE OR CONVERT TO AN ACEQUIA DITCH CORPORATION.

(4) AN ACEQUIA DITCH CORPORATION, IF ITS ARTICLES OF INCORPORATION SO STATE, MAY SPECIFY IN ITS BYLAWS THAT:

(a) ITS ELECTIONS MAY BE HELD PURSUANT TO A ONE LANDOWNER-ONE VOTE SYSTEM;

(b) OWNERS OF LAND IRRIGATED BY THE DITCH CAN BE REQUIRED TO CONTRIBUTE LABOR TO THE MAINTENANCE AND REPAIR OF THE ACEQUIA OR, IN THE ALTERNATIVE, TO PAY AN ASSESSMENT IN LIEU OF SUCH LABOR;

(c) WATER IN THE DITCH MAY BE ALLOCATED ON A BASIS OTHER THAN PRO RATA OWNERSHIP OF THE CORPORATION; AND

(d) THE CORPORATION HAS A RIGHT OF FIRST REFUSAL REGARDING THE SALE,

LEASE, OR EXCHANGE OF ANY SURFACE WATER RIGHT THAT HAS HISTORICALLY BEEN USED TO IRRIGATE LONG-LOT LAND BY THE ACEQUIA.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 2009