

## CHAPTER 111

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**WATER AND IRRIGATION**

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**SENATE BILL 13-041**

BY SENATOR(S) Hodge and Roberts, Baumgardner, Brophy, Carroll, Crowder, Giron, Grantham, Jahn, Jones, Kefalas, King, Lambert, Lundberg, Marble, Newell, Nicholson, Schwartz, Todd;  
also REPRESENTATIVE(S) Fischer and Sonnenberg, Buckner, Coram, Duran, Fields, Ginal, Hamner, Holbert, Hullinghorst, Labuda, Pettersen, Primavera, Rosenthal, Saine, Salazar, Scott, Vigil, Young.

**AN ACT****CONCERNING THE PROTECTION OF STORED WATER, AND, IN CONNECTION THEREWITH, PRESERVING SUPPLIES FOR DROUGHT AND LONG-TERM NEEDS.**

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

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

(a) Finds that, in order for a water judge to issue an initial decree for a conditional water storage right, the applicant must have proven and the water judge must have found that the underlying appropriation is nonspeculative under law;

(b) Declares that this act does not repeal or affect in any way the anti-speculation requirements under law, but the act does change existing law regarding the requirements to make conditional storage rights absolute;

(c) Declares that the purpose of section 37-92-301 (4) (e), Colorado Revised Statutes, is to allow a conditional storage right to be made absolute for all decreed purposes once water is stored pursuant to the water right in the subject decreed storage facility, thus avoiding additional diligence proceedings that would otherwise be required after the storage facility is in place and water has been stored; and

(d) Determines that:

(I) The storage of water in a reservoir under a conditional water storage decree effectuates the beneficial use of the decreed storage right; and

(II) Holding water in storage found to be reasonably needed under a water storage

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

decree from year to year for drought protection or to meet demonstrated future demands in accordance with a water storage decree is not speculative hoarding, but rather is part of prudent water management.

**SECTION 2.** In Colorado Revised Statutes, 37-92-103, **amend** (4) as follows:

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

(4) "Beneficial use" ~~is~~ MEANS the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made. ~~and~~ Without limiting the generality of the ~~foregoing~~ PREVIOUS SENTENCE, "BENEFICIAL USE" includes:

(a) The impoundment of water for FIREFIGHTING OR STORAGE FOR ANY PURPOSE FOR WHICH AN APPROPRIATION IS LAWFULLY MADE, INCLUDING recreational, purposes, including fishery, or wildlife PURPOSES; ~~and also includes~~

(b) The diversion of water by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for recreational in-channel diversion purposes; AND

(c) For the benefit and enjoyment of present and future generations, "~~beneficial use~~" shall also include the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree.

**SECTION 3.** In Colorado Revised Statutes, 37-92-301, **amend** (5); and **add** (4) (d) and (4) (e) as follows:

**37-92-301. Administration and distribution of waters.** (4) (d) IN THE CASE OF A PROJECT OR INTEGRATED SYSTEM THAT CONTAINS MORE THAN ONE WATER STORAGE FEATURE, AN APPLICANT NEED NOT DEMONSTRATE THAT ALL EXISTING ABSOLUTE DECREED WATER RIGHTS THAT ARE PART OF THE PROJECT OR INTEGRATED SYSTEM HAVE BEEN UTILIZED TO THEIR FULL EXTENT IN ORDER TO MAKE ABSOLUTE, IN WHOLE OR IN PART, A CONDITIONAL WATER STORAGE RIGHT DECREED FOR A SEPARATE FEATURE OF THE PROJECT OR INTEGRATED SYSTEM.

(e) A DECREED CONDITIONAL WATER STORAGE RIGHT SHALL BE MADE ABSOLUTE FOR ALL DECREED PURPOSES TO THE EXTENT OF THE VOLUME OF THE APPROPRIATION THAT HAS BEEN CAPTURED, POSSESSED, AND CONTROLLED AT THE DECREED STORAGE STRUCTURE.

(5) In all proceedings for a change of water right and for approval of reasonable diligence with respect to a conditional water right, it is appropriate for the referee and the courts to consider abandonment of all or any part of such water right or conditional water right; except that no conditional underground water right requiring the construction of a well shall be declared abandoned pursuant to this subsection (5) solely upon the ground that the permit issued for the construction of such well by the state engineer pursuant to section 37-90-137 (1) has expired. In

ALL SUCH PROCEEDINGS, NO WATER STORAGE RIGHT SHALL BE DECLARED ABANDONED IN WHOLE OR IN PART ON ACCOUNT OF CARRYING WATER OVER IN STORAGE FROM YEAR TO YEAR.

**SECTION 4. Act subject to petition - effective date - applicability.** (1) 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.

(2) This act applies to applications pending on or after the applicable effective date of this act.

Approved: April 8, 2013