

**First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 13-0309.01 Thomas Morris x4218

**SENATE BILL 13-019**

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**SENATE SPONSORSHIP**

**Schwartz,**

**HOUSE SPONSORSHIP**

**Fischer,**

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**Senate Committees**

Agriculture, Natural Resources, & Energy

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE PROMOTION OF WATER CONSERVATION MEASURES.**

**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://www.leg.state.co.us/billsummaries>.)*

**Section 1** of the bill declares that increasing water use efficiency by appropriators promotes the maximum utilization of Colorado's water resources and is in the public interest.

The amount of water that currently can be changed to a new type or place of use is limited by the amount of water that was historically consumed by the original type and place of use. Therefore, a water user has no incentive to reduce the amount of water diverted. Current law

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

encourages the conservation of water in some contexts by eliminating from the determination of abandonment the period during which water is conserved under a variety of government-sponsored programs. However, in these contexts, the water conserved through a reduction in the application of the water to a beneficial use results in a reduction of consumptive use. **Section 2** directs the water judge to disregard the decrease in use of water from such programs in its determinations of historical consumptive use in change of water right cases and adds to the list a decrease in water use to provide for compact compliance.

**Section 3** defines "conserved water", and **section 4** directs water judges to allow a change of water right for conserved water.

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

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

4 (a) Finds that:

5 (I) Current law provides few incentives for water appropriators to  
6 increase the efficiency of their water practices, while much of Colorado  
7 is currently experiencing severe drought; and

8 (II) Although most water used inefficiently nevertheless ultimately  
9 is beneficially used, the inefficient use of water impedes the maximum  
10 utilization of Colorado's water resources;

11 (b) Determines that, at a time when Colorado can expect drought  
12 conditions to increase in frequency and severity, the general assembly can  
13 encourage appropriators to increase the efficiency of their water use  
14 without thereby causing or contributing to material injury to other water  
15 uses; and

16 (c) Declares that this act promotes the maximum utilization of  
17 Colorado's water resources, can help alleviate the effects of drought on  
18 river flows, and is in the public interest.

19 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3)

1 (c) as follows:

2 **37-92-305. Standards with respect to rulings of the referee and**

3 **decisions of the water judge.** (3) (c) IN DETERMINING THE AMOUNT OF

4 HISTORICAL CONSUMPTIVE USE, THE WATER JUDGE SHALL NOT CONSIDER

5 ANY DECREASE IN USE FOR THE DURATION OF, AND RESULTING FROM, THE

6 FOLLOWING:

7 (I) THE LAND ON WHICH THE WATER FROM THE PERMIT HAS BEEN

8 HISTORICALLY APPLIED IS ENROLLED UNDER A FEDERAL LAND

9 CONSERVATION PROGRAM; OR

10 (II) THE NONUSE OF THE WATER FROM THE PERMIT BY ITS OWNER

11 IS A RESULT OF PARTICIPATION IN:

12 (A) A WATER CONSERVATION PROGRAM APPROVED BY A STATE

13 AGENCY, A WATER CONSERVATION DISTRICT, OR A WATER CONSERVANCY

14 DISTRICT;

15 (B) A WATER CONSERVATION PROGRAM ESTABLISHED THROUGH

16 FORMAL WRITTEN ACTION OR ORDINANCE BY A MUNICIPALITY OR ITS

17 MUNICIPAL WATER SUPPLIER;

18 (C) AN APPROVED LAND FALLOWING PROGRAM AS PROVIDED BY

19 LAW IN ORDER TO CONSERVE WATER OR TO PROVIDE WATER FOR COMPACT

20 COMPLIANCE;

21 (D) A WATER BANKING PROGRAM AS PROVIDED BY LAW;

22 (E) A LOAN OF WATER TO THE COLORADO WATER CONSERVATION

23 BOARD FOR INSTREAM FLOW USE UNDER SECTION 37-83-105 (2); OR

24 (F) ANY CONTRACT OR AGREEMENT WITH THE COLORADO WATER

25 CONSERVATION BOARD THAT ALLOWS THE BOARD TO USE ALL OR A PART

26 OF A WATER RIGHT TO PRESERVE OR IMPROVE THE NATURAL

27 ENVIRONMENT TO A REASONABLE DEGREE UNDER SECTION 37-92-102 (3).

1           **SECTION 3.** In Colorado Revised Statutes, 37-92-103, **add** (6.2)  
2 as follows:

3           **37-92-103. Definitions.** As used in this article, unless the context  
4 otherwise requires:

5           (6.2) (a) "CONSERVED WATER" MEANS THAT PORTION OF AN  
6 ADJUDICATED WATER RIGHT THAT IS THE DIFFERENCE BETWEEN:

7           (I) THE AMOUNT THAT HAD HISTORICALLY BEEN PUT TO A  
8 BENEFICIAL USE UNDER REASONABLY EFFICIENT PRACTICES TO  
9 ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR WHICH THE  
10 APPROPRIATION WAS LAWFULLY MADE; AND

11           (II) THE AMOUNT BENEFICIALLY USED AFTER INCREASED  
12 EFFICIENCY IN THE MEANS OF DIVERSION, CONVEYANCE, STORAGE,  
13 APPLICATION, OR USE THAT RESULTS IN DECREASED DIVERSIONS.

14           (b) FOR THE PURPOSES OF THIS SUBSECTION (6.2), "CONSERVED  
15 WATER" DOES NOT INCLUDE WATER DERIVED FROM THE SALVAGE OF  
16 TRIBUTARY WATERS BY THE ERADICATION OF PHREATOPHYTES.

17           **SECTION 4.** In Colorado Revised Statutes, 37-92-305, **add** (3.3)  
18 as follows:

19           **37-92-305. Standards with respect to rulings of the referee and**  
20 **decisions of the water judge.** (3.3) (a) A WATER JUDGE MAY APPROVE  
21 A CHANGE OF WATER RIGHT FOR CONSERVED WATER IF, IN ADDITION TO  
22 ALL OTHER REQUIREMENTS APPLICABLE TO A CHANGE OF A WATER RIGHT,  
23 THE APPLICATION WAS FILED WITHIN TWO YEARS AFTER THE DIVERSIONS  
24 WERE DECREASED AND:

25           (I) THE CONSERVED WATER, AS CHANGED, MAINTAINS THE  
26 HISTORICAL RETURN FLOW OBLIGATIONS OF THE ADJUDICATED WATER  
27 RIGHT;

1           (II) THE CHANGED USE FOR THE CONSERVED WATER WILL BE  
2 NONCONSUMPTIVE BETWEEN THE POINT OF DIVERSION BEFORE THE  
3 CHANGE AND THE LOWEST POINT OF RETURN FLOW BEFORE THE CHANGE;

4           (III) THE CONSERVED WATER, AS CHANGED, IS LIMITED TO THE  
5 HISTORICAL DIVERSIONS ASSOCIATED WITH THE WATER RIGHT BEFORE  
6 AGRICULTURAL EFFICIENCY MEASURES WERE UNDERTAKEN;

7           (IV) THE APPROVAL WILL NOT ADVERSELY AFFECT COLORADO'S  
8 INTERSTATE COMPACT ENTITLEMENTS OR OBLIGATIONS; AND

9           (V) THE DECREE IDENTIFIES THE AREA OR REACH OF SURFACE  
10 WATER WITHIN WHICH CONSERVED WATER, AS CHANGED, MAY BE USED.

11           (b) CONSERVED WATER THAT HAS BEEN CHANGED PURSUANT TO  
12 THIS SUBSECTION (3.3) IS NOT SUBJECT TO ABANDONMENT TO THE EXTENT  
13 THAT ANY REDUCTION IN CONSUMPTIVE USE RESULTS FROM THE  
14 IMPLEMENTATION OF AGRICULTURAL EFFICIENCY MEASURES.

15           **SECTION 5. Applicability.** This act applies to historical  
16 consumptive use determinations made and water decrees entered on or  
17 after the effective date of this act.

18           **SECTION 6. Safety clause.** The general assembly hereby finds,  
19 determines, and declares that this act is necessary for the immediate  
20 preservation of the public peace, health, and safety.