

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

INTRODUCED

LLS NO. 13-0104.01 Jennifer Berman x3286

SENATE BILL 13-078

SENATE SPONSORSHIP

Giron, Brophy, Hodge, Roberts, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Fischer, Swerdfeger, Wilson

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING POINTS OF DIVERSION THAT ARE NOT LOCATED AT THE**
102 **PHYSICAL LOCATION SPECIFIED IN THE DECREES FOR DIVERTED**
103 **WATER RIGHTS.**

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>.)

Water Resources Review Committee. For a variety of reasons, some points of diversion are erroneously placed at a location that is different from the decreed location established by a water court. The reasons for these erroneous locations include advances in surveying

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.

technology and standards, typographical errors in a water rights decree, references in a decree to landmarks that do not exist any more or have changed, and floods and other natural events affecting the diversion structure. The bill provides a process for a holder of a decreed water right with an erroneously located point of diversion to apply for a correction in the point of diversion if the point of diversion meets the definition of an "established erroneous point of diversion", as set forth in the bill.

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

2 **SECTION 1. Legislative declaration.** It is the purpose of this act
3 to allow the owners and users of water rights to reconcile the actual
4 location of diversion structures with the described locations in the
5 original decrees confirming the water rights when the water rights have
6 continuously diverted at the same location with the intent to divert
7 pursuant to the decreed location. If the erroneous location description in
8 the decrees is due to a clerical error, a difference in locating methods
9 from the time the decrees were established, or a minor inaccuracy, this act
10 will allow the owners and users of the water rights to correct the location
11 description in the decrees without the need to file an application for a
12 change of water right.

13 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.6)
14 as follows:

15 **37-92-305. Standards with respect to rulings of the referee and**
16 **decisions of the water judge. (3.6) Correction to an established**
17 **erroneous point of diversion - definitions. (a) AS USED IN THIS**
18 **SUBSECTION (3.6):**

19 (I) "DIVERTER" MEANS THE OWNER OR USER OF A DECREED WATER
20 RIGHT.

21 (II) "ESTABLISHED ERRONEOUS POINT OF DIVERSION" MEANS A
22 POINT OF DIVERSION OF EITHER SURFACE WATER OR GROUNDWATER:

1 (A) THAT HAS BEEN AT THE SAME PHYSICAL LOCATION SINCE THE
2 APPLICABLE ORIGINAL DECREE OR DECREES CONFIRMED THE WATER RIGHT,
3 UNLESS IT WAS RELOCATED PURSUANT TO SECTION 37-86-111 OR, IN THE
4 CASE OF A WELL, RELOCATED ACCORDING TO A VALID WELL PERMIT;

5 (B) THAT IS NOT LOCATED AT THE LOCATION SPECIFIED IN THE
6 APPLICABLE DECREE OR DECREES CONFIRMING THE WATER RIGHT; AND

7 (C) FROM WHICH THE DIVERTER HAS DIVERTED WATER WITH THE
8 INTENT TO DIVERT PURSUANT TO THE DECREE OR DECREES CONFIRMING
9 THE WATER RIGHT.

10 (b) (I) TO PROCEED WITH A CORRECTION IN POINT OF DIVERSION
11 UNDER THIS SUBSECTION (3.6), A DIVERTER HAS THE BURDEN TO PROVE BY
12 A PREPONDERANCE OF THE EVIDENCE THAT A POINT OF DIVERSION IS AN
13 ESTABLISHED ERRONEOUS POINT OF DIVERSION.

14 (II) EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBSECTION (3.6),
15 AN APPLICATION FOR A CORRECTION IN POINT OF DIVERSION IS SUBJECT TO
16 ALL PROVISIONS OF THIS ARTICLE, INCLUDING SECTIONS 37-92-302 TO
17 37-92-305.

18 (III) THE PROCEDURES IN THIS SUBSECTION (3.6) APPLY ONLY TO
19 A CORRECTION IN POINT OF DIVERSION AND DO NOT ALTER THE
20 PROCEDURES OR LEGAL STANDARDS APPLICABLE TO A CHANGE OF WATER
21 RIGHT.

22 (IV) A DIVERTER MAY APPLY FOR A CORRECTION IN POINT OF
23 DIVERSION ONLY:

24 (A) FOR A POINT OF DIVERSION THAT IS ALREADY IN PLACE; AND

25 (B) IF ONE OR MORE WATER RIGHTS ARE DIVERTED AT THE
26 CORRECTED POINT OF DIVERSION.

27 (V) THE APPLICATION MUST NOT INCLUDE OR BE CONSOLIDATED

1 OR JOINED WITH AN ACTION BY THE APPLICANT SEEKING ANY TYPE OF
2 CHANGE OF WATER RIGHT OR DILIGENCE PROCEEDING OR APPLICATION TO
3 MAKE ABSOLUTE WITH RESPECT TO THE WATER RIGHT OR RIGHTS
4 INCLUDED IN THE APPLICATION.

5 (c) IF AN APPLICANT PROVES THE MATTERS IN PARAGRAPH (a) OF
6 THIS SUBSECTION (3.6) BY A PREPONDERANCE OF THE EVIDENCE, THEN
7 THERE IS A REBUTTABLE PRESUMPTION THAT A CORRECTION IN POINT OF
8 DIVERSION:

9 (I) WILL NOT CAUSE AN ENLARGEMENT OF THE HISTORICAL USE
10 ASSOCIATED WITH A WATER RIGHT DIVERTED AT THE POINT OF DIVERSION;
11 AND

12 (II) DOES NOT INJURIOUSLY AFFECT THE OWNER OF OR PERSONS
13 ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED
14 CONDITIONAL WATER RIGHT.

15 (d) IF THE APPLICANT DOES NOT PROVE THE MATTERS IN
16 PARAGRAPH (a) OF THIS SUBSECTION (3.6) OR IF THE PRESUMPTIONS IN
17 PARAGRAPH (c) OF THIS SUBSECTION (3.6) ARE SUCCESSFULLY REBUTTED,
18 THE REFEREE OR WATER JUDGE SHALL DISMISS THE APPLICATION WITHOUT
19 PREJUDICE TO THE APPLICANT'S FILING AN APPLICATION FOR A CHANGE OF
20 WATER RIGHT.

21 (e) THE FOLLOWING STANDARDS APPLY TO A CORRECTION IN POINT
22 OF DIVERSION:

23 (I) THE DECREE MUST NOT REQUANTIFY THE WATER RIGHTS FOR
24 WHICH THE POINT OF DIVERSION IS BEING CORRECTED; AND

25 (II) THE APPLICANT, IN PROSECUTING THE CORRECTION IN POINT
26 OF DIVERSION, IS NOT REQUIRED TO:

27 (A) PROVE THAT THE WATER DIVERTED AT THE CORRECTED POINT

1 OF DIVERSION CAN AND WILL BE DIVERTED AND PUT TO USE WITHIN A
2 REASONABLE PERIOD OF TIME;

3 (B) PROVE COMPLIANCE WITH THE ANTI-SPECULATION DOCTRINE;
4 OR

5 (C) PROVIDE OR MAKE A SHOWING OF FUTURE NEED IMPOSED BY
6 THE CASES OF *PAGOSA AREA WATER AND SANITATION DISTRICT V. TROUT*
7 *UNLIMITED*, 219 P.3d 774 (COLO. 2009) OR *CITY OF THORNTON V. BIJOU*
8 *IRRIGATION CO.*, 926 P.2d 1 (COLO. 1996).

9 **SECTION 3. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2014 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.