

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0374.01 Thomas Morris x4218

SENATE BILL 13-041

SENATE SPONSORSHIP

Hodge and Roberts,

HOUSE SPONSORSHIP

Fischer and Sonnenberg,

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

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

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>.)

In the case of *Upper Yampa Water Conservancy Dist. v. Wolfe*, 255 P.3d 1108 (Colo. 2011), the Colorado supreme court held that storage of water is not a beneficial use, at least where flood control and fire or drought protection are not the stated uses of the water, and that to perfect

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.

a conditional storage right, the water must be released from storage and put to beneficial use. Further, an applicant must show that it has exhausted its absolute storage rights before its conditional storage rights can be perfected.

The bill reverses these holdings by:

- ! Expanding the definition of "beneficial use" to include the impoundment of water for firefighting or storage for any decreed purpose (**section 1** of the bill);
- ! Specifying in **section 2** that:
 - ! An applicant doesn't have to demonstrate that all existing absolute decreed water rights that are part of an integrated system have been utilized to their full extent to establish the need to exercise a conditional water storage right or to make it absolute, in whole or in part;
 - ! When conditional water storage rights are made absolute, the decreed volume should be the extent of the volume of the appropriation that has been captured, possessed, and controlled at the decreed storage structure; and
 - ! Carrying water over in storage from one year to another is not grounds for a determination of abandonment.

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

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

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

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

11 (a) The impoundment of water for **FIREFIGHTING OR STORAGE FOR**
12 ANY PURPOSE FOR WHICH AN APPROPRIATION IS LAWFULLY MADE.

1 INCLUDING recreational, ~~purposes, including~~ fishery, or wildlife
2 PURPOSES; ~~and also includes~~

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

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

13 **SECTION 2.** In Colorado Revised Statutes, 37-92-301, **amend**
14 (5); and **add** (4) (d) and (4) (e) as follows:

15 **37-92-301. Administration and distribution of waters.**

16 (4) (d) IN THE CASE OF A PROJECT OR INTEGRATED SYSTEM THAT
17 CONTAINS MORE THAN ONE WATER STORAGE FEATURE, AN APPLICANT
18 NEED NOT DEMONSTRATE THAT ALL EXISTING ABSOLUTE DECREED WATER
19 RIGHTS THAT ARE PART OF THE PROJECT OR INTEGRATED SYSTEM HAVE
20 BEEN UTILIZED TO THEIR FULL EXTENT IN ORDER TO MAKE ABSOLUTE, IN
21 WHOLE OR IN PART, A CONDITIONAL WATER STORAGE RIGHT DECREED FOR
22 A SEPARATE FEATURE OF THE PROJECT OR INTEGRATED SYSTEM.

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

27 (5) In all proceedings for a change of water right and for approval

1 of reasonable diligence with respect to a conditional water right, it is
2 appropriate for the referee and the courts to consider abandonment of all
3 or any part of such water right or conditional water right; except that no
4 conditional underground water right requiring the construction of a well
5 shall be declared abandoned pursuant to this subsection (5) solely upon
6 the ground that the permit issued for the construction of such well by the
7 state engineer pursuant to section 37-90-137 (1) has expired. IN ALL SUCH
8 PROCEEDINGS, NO WATER STORAGE RIGHT SHALL BE DECLARED
9 ABANDONED IN WHOLE OR IN PART ON ACCOUNT OF CARRYING WATER
10 OVER IN STORAGE FROM YEAR TO YEAR.

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

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