First Regular Session Sixty-ninth General Assembly STATE OF COLORADO

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BILL 4

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LLS NO. 13-0113.01 Thomas Morris x4218

INTERIM COMMITTEE BILL

Water Resources Review Committee

SHORT TITLE: "Promote Water Conservation"

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.)

Water Resources Review Committee. Section 1 of the bill declares that increasing water use efficiency by providing market-based incentives to 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; thus, a water user has no incentive to reduce the amount of water diverted. Current law 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.

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 to water appropriators to 6 increase the efficiency of their water practices; and 7 (II) Although most water used inefficiently nevertheless ultimately 8 is beneficially used, the inefficient use of water impedes the maximum 9 utilization of Colorado's water resources; 10 (b) Determines that the general assembly can provide 11 appropriators with market-based incentives to increase the efficiency of 12 their water use without thereby causing or contributing to material injury 13 to other water uses; and 14 (c) Declares that this act promotes the maximum utilization of 15 Colorado's water resources and is in the public interest. 16 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, add (3) 17 (c) as follows: 18 37-92-305. Standards with respect to rulings of the referee and 19 decisions of the water judge. (3) (c) IN DETERMINING THE AMOUNT OF

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1	HISTORICAL CONSUMPTIVE USE, THE WATER JUDGE SHALL NOT CONSIDER
2	ANY DECREASE IN USE FOR THE DURATION OF, AND RESULTING FROM, THE
3	FOLLOWING:
4	(I) THE LAND ON WHICH THE WATER FROM THE PERMIT HAS BEEN
5	HISTORICALLY APPLIED IS ENROLLED UNDER A FEDERAL LAND
6	CONSERVATION PROGRAM; OR
7	(II) THE NONUSE OF THE WATER FROM THE PERMIT BY ITS OWNER
8	IS A RESULT OF PARTICIPATION IN:
9	(A) A WATER CONSERVATION PROGRAM APPROVED BY A STATE
10	AGENCY, A WATER CONSERVATION DISTRICT, OR A WATER CONSERVANCY
11	DISTRICT;
12	(B) A WATER CONSERVATION PROGRAM ESTABLISHED THROUGH
13	FORMAL WRITTEN ACTION OR ORDINANCE BY A MUNICIPALITY OR ITS
14	MUNICIPAL WATER SUPPLIER;
15	(C) AN APPROVED LAND FALLOWING PROGRAM AS PROVIDED BY
16	LAW IN ORDER TO CONSERVE WATER OR TO PROVIDE WATER FOR COMPACT
17	COMPLIANCE;
18	(D) A WATER BANKING PROGRAM AS PROVIDED BY LAW;
19	(E) A LOAN OF WATER TO THE COLORADO WATER CONSERVATION
20	BOARD FOR INSTREAM FLOW USE UNDER SECTION 37-83-105 (2); OR
21	(F) ANY CONTRACT OR AGREEMENT WITH THE COLORADO WATER
22	CONSERVATION BOARD THAT ALLOWS THE BOARD TO USE ALL OR A PART
23	OF A WATER RIGHT TO PRESERVE OR IMPROVE THE NATURAL
24	ENVIRONMENT TO A REASONABLE DEGREE UNDER SECTION 37-92-102 (3).
25	SECTION 3. In Colorado Revised Statutes, 37-92-103, add (6.2)
26	as follows:
27	37-92-103. Definitions. As used in this article, unless the context

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1	otherwise requires:
2	(6.2) (a) "Conserved water" means that portion of an
3	ADJUDICATED WATER RIGHT THAT IS THE DIFFERENCE BETWEEN:
4	(I) THE AMOUNT THAT HAD HISTORICALLY BEEN PUT TO A
5	BENEFICIAL USE UNDER REASONABLY EFFICIENT PRACTICES TO
6	ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR WHICH THE
7	APPROPRIATION WAS LAWFULLY MADE; AND
8	(II) THE AMOUNT BENEFICIALLY USED AFTER INCREASED
9	EFFICIENCY IN THE MEANS OF DIVERSION, CONVEYANCE, STORAGE,
10	APPLICATION, OR USE THAT RESULTS IN DECREASED DIVERSIONS.
11	(b) For the purposes of this subsection (6.2), "conserved
12	WATER "DOES NOT INCLUDE WATER DERIVED FROM THE SALVAGE OF
13	TRIBUTARY WATERS BY THE ERADICATION OF PHREATOPHYTES.
14	SECTION 4. In Colorado Revised Statutes, 37-92-305, add (3.3)
15	as follows:
16	<{ Option 1: with state engineer rules}>
17	37-92-305. Standards with respect to rulings of the referee and
18	decisions of the water judge - rules. (3.3) (a) A WATER JUDGE MAY
19	APPROVE A CHANGE OF WATER RIGHT FOR CONSERVED WATER IF, IN
20	ADDITION TO ALL OTHER REQUIREMENTS APPLICABLE TO A CHANGE OF A
21	WATER RIGHT, THE APPLICATION WAS FILED WITHIN TWO YEARS AFTER THE
22	DIVERSIONS WERE DECREASED AND:
23	(I) THE STATE ENGINEER HAS PROMULGATED RULES PURSUANT TO
24	PARAGRAPH (b) OF THIS SUBSECTION (3.3) OR ISSUED A WRITTEN

NEEDED TO IMPLEMENT THIS SUBSECTION (3.3);

(II) THE CHANGED USE FOR THE CONSERVED WATER WILL BE

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1	NONCONSUMPTIVE BETWEEN THE POINT OF DIVERSION BEFORE THE
2	CHANGE AND THE LOWEST POINT OF RETURN FLOW BEFORE THE CHANGE;
3	(III) THE CONSERVED WATER, AS CHANGED, MAINTAINS THE
4	HISTORICAL RETURN FLOW OBLIGATIONS OF THE ADJUDICATED WATER
5	RIGHT;
6	(IV) THE CONSERVED WATER, AS CHANGED, IS LIMITED TO THE
7	HISTORICAL DIVERSIONS ASSOCIATED WITH THE WATER RIGHT; AND
8	(V) THE APPROVAL WILL NOT ADVERSELY AFFECT COLORADO'S
9	INTERSTATE COMPACT ENTITLEMENTS OR OBLIGATIONS.
10	(b) THE STATE ENGINEER MAY PROMULGATE RULES TO IMPLEMENT
11	This subsection (3.3) if the state engineer determines that doing
12	SO IS NECESSARY OR CONVENIENT FOR THE PROPER ADMINISTRATION OF
13	WATER RIGHTS OR THE PREVENTION OF MATERIAL INJURY. THE RULES MAY
14	ADD PROCEDURAL OR SUBSTANTIVE CONDITIONS WITH WHICH AN
15	APPLICANT FOR A CHANGE OF CONSERVED WATER MUST COMPLY FOR THE
16	WATER JUDGE TO APPROVE A CHANGE UNDER THIS SUBSECTION (3.3).
17	(c) CONSERVED WATER THAT HAS BEEN CHANGED PURSUANT TO
18	This subsection (3.3) is not subject to abandonment between the
19	TIME THE DIVERSIONS WERE DECREASED OR TWO YEARS BEFORE THE
20	CHANGE APPLICATION WAS FILED, WHICHEVER IS LATER, AND THE TIME
21	THE CHANGE DECREE BECOMES FINAL.
22	<{Option 2: without state engineer rules}>
23	37-92-305. Standards with respect to rulings of the referee and
24	decisions of the water judge. (3.3) (a) A WATER JUDGE MAY APPROVE A
25	CHANGE OF WATER RIGHT FOR CONSERVED WATER IF, IN ADDITION TO ALL
26	OTHER REQUIREMENTS APPLICABLE TO A CHANGE OF A WATER RIGHT, THE
27	APPLICATION WAS FILED WITHIN TWO YEARS AFTER THE DIVERSIONS WERE

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1	DECREASED AND:
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3	HISTORICAL RETU

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(I) THE CONSERVED WATER, AS CHANGED, MAINTAINS THE
HISTORICAL RETURN FLOW OBLIGATIONS OF THE ADJUDICATED WATER
RIGHT;
(II) THE CHANGED USE FOR THE CONSERVED WATER WILL BE
NONCONSUMPTIVE BETWEEN THE POINT OF DIVERSION BEFORE THE

(III) THE CONSERVED WATER, AS CHANGED, IS LIMITED TO THE HISTORICAL DIVERSIONS ASSOCIATED WITH THE WATER RIGHT;

CHANGE AND THE LOWEST POINT OF RETURN FLOW BEFORE THE CHANGE:

- (IV) THE APPROVAL WILL NOT ADVERSELY AFFECT COLORADO'S INTERSTATE COMPACT ENTITLEMENTS OR OBLIGATIONS; AND
- (V) THE DECREE IDENTIFIES THE AREA OR REACH OF SURFACE WATER WITHIN WHICH CONSERVED WATER, AS CHANGED, MAY BE USED
 - (b) CONSERVED WATER THAT HAS BEEN CHANGED PURSUANT TO THIS SUBSECTION (3.3) IS NOT SUBJECT TO ABANDONMENT BETWEEN THE TIME THE DIVERSIONS WERE DECREASED OR TWO YEARS BEFORE THE CHANGE APPLICATION WAS FILED, WHICHEVER IS LATER, AND THE TIME THE CHANGE DECREE BECOMES FINAL.

SECTION 5. 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

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- 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) The provisions of this act apply to historical consumptive use
 determinations made and water decrees entered on or after the applicable
 effective date of this act.
- 6 <{Do you want a safety clause or a specific effective date?}>

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