

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 14-0248.01 Jennifer Berman

HOUSE BILL

HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

Schwartz,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF FLEXIBLE WATER MARKETS.**

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. Under the anti-speculation doctrine, current water court proceedings governing an application to change the beneficial use of an irrigation water right require the applicant to designate a specific alternative beneficial use identified at the time of the application. The bill creates a more flexible change-in-use system by allowing an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the

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.

permanent dry-up of irrigated lands to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied.

Section 1 of the bill defines "flex use" to mean an application of the fully consumptive portion of water that has been subject to a water right change-in-use proceeding to any beneficial use. It also redefines "appropriation" to exclude flex use from the anti-speculation doctrine.

Sections 2 and 3 describe the procedures for obtaining a flex use change-in-use decree and a flex use substitute water supply plan.

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 (3) (b), (4) (b), and (4) (c); and **add** (4) (d), (7.3), and (7.5) as follows:

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

6 (3) (b) Nothing in this subsection (3) ~~shall affect~~ AFFECTS
7 appropriations by the state of Colorado for minimum streamflows as
8 described in subsection (4) of this section OR APPROVAL OF FLEX USE.

9 (4) "Beneficial use" means the use of that amount of water that is
10 reasonable and appropriate under reasonably efficient practices to
11 accomplish without waste the purpose for which the appropriation is
12 lawfully made. Without limiting the generality of the previous sentence,
13 "beneficial use" includes:

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

18 (c) For the benefit and enjoyment of present and future
19 generations, the appropriation by the state of Colorado in the manner
20 prescribed by law of ~~such~~ THE minimum flows between specific points or

1 levels for and on natural streams and lakes as are required to preserve the
2 natural environment to a reasonable degree; AND

3 (d) A FLEX USE.

4 (7.3) "FLEX CONSUMPTIVE USE" MEANS THE FULLY CONSUMPTIVE
5 PORTION OF A WATER RIGHT THAT HAS BEEN QUANTIFIED BY EITHER A
6 WATER COURT CHANGE-IN-USE DECREE OR A SUBSTITUTE WATER SUPPLY
7 PLAN APPROVAL, ENTERED OR APPROVED ON OR AFTER JUNE 1, 2014,
8 THAT:

9 (a) IDENTIFIES THE WATER RIGHT AS A FLEX USE WATER RIGHT;

10 (b) QUANTIFIES THE HISTORICAL CONSUMPTIVE USE OF THE WATER
11 RIGHT;

12 (c) PROVIDES TERMS AND CONDITIONS FOR A CHANGE IN TYPE OF
13 USE OF THE WATER RIGHT THAT PREVENT MATERIAL INJURY TO OTHER
14 VESTED WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS,
15 INCLUDING THE RETURN FLOW OBLIGATIONS IN TIME, PLACE, AND
16 AMOUNT;

17 (d) PERMITS DELIVERY AND USE OF ALL OR A PORTION OF THE
18 CONSUMPTIVE USE ASSOCIATED WITH THE WATER RIGHT TO A FLEX USE
19 THROUGH THE IMPLEMENTATION OF FALLOWING, REGULATED DEFICIT
20 IRRIGATION, REDUCED CONSUMPTIVE USE CROPPING, OR OTHER
21 ALTERNATIVE TO PERMANENT CESSATION OF AGRICULTURAL IRRIGATION
22 ON THE PROPERTY THAT IS SERVED BY THE WATER RIGHT; AND

23 (e) ESTABLISHES A FIXED POINT OR POINTS OF DELIVERY FOR THE
24 FULLY CONSUMPTIVE PORTION OF THE WATER RIGHT.

25 (7.5) (a) "FLEX USE" MEANS AN APPLICATION OF FLEX
26 CONSUMPTIVE USE TO ANY BENEFICIAL USE.

27 (b) FOLLOWING DELIVERY OF FLEX CONSUMPTIVE USE AT THE

1 POINT OR POINTS OF DELIVERY IDENTIFIED IN THE APPLICABLE
2 CHANGE-IN-USE DECREE OR SUBSTITUTE WATER SUPPLY PLAN APPROVAL,
3 THE WATER USER MAY ACCOMPLISH FLEX USE BY DIRECT DELIVERY;
4 STORAGE; RECHARGE; EXCHANGE; WATER BANKING; WHERE APPROPRIATE,
5 NONCONSUMPTIVE USE; OR ANY OTHER LAWFUL MEANS THAT COMPLY
6 WITH APPLICABLE DECREES, STATUTORY AND OTHER LEGAL
7 REQUIREMENTS, AND ADMINISTRATION BY THE STATE ENGINEER AND
8 DIVISION ENGINEERS.

9 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.7)
10 as follows:

11 **37-92-305. Standards with respect to rulings of the referee and**
12 **decisions of the water judge. (3.7) Flex use.** IF A CHANGE-IN-USE
13 APPLICATION SEEKS APPROVAL OF FLEX USE, THE TERMS AND CONDITIONS
14 OF THE DECREE MUST COMPLY WITH SECTION 37-92-103 (7.3) AND (7.5).
15 THE TERMS AND CONDITIONS OF THE DECREE MUST ALSO REQUIRE THAT
16 THE APPLICANT REPLACE HISTORICAL RETURN FLOWS IN TIME, PLACE, AND
17 AMOUNT TO PREVENT MATERIAL INJURY TO THE OWNERS OF VESTED
18 WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS.

19 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, **add** (12)
20 as follows:

21 **37-92-308. Substitute water supply plans - special procedures**
22 **for review - water adjudication cash fund - legislative declaration -**
23 **repeal. (12) Flex use.** IF THE STATE ENGINEER APPROVES A SUBSTITUTE
24 WATER SUPPLY PLAN APPLICATION IN WHICH THE PLAN SOUGHT IS FOR A
25 FLEX USE, THE TERMS AND CONDITIONS OF THE APPROVAL MUST COMPLY
26 WITH SECTION 37-92-103 (7.3) AND (7.5). THE TERMS AND CONDITIONS OF
27 THE APPROVAL MUST ALSO REQUIRE THAT THE APPLICANT REPLACE

1 HISTORICAL RETURN FLOWS IN TIME, PLACE, AND AMOUNT TO PREVENT
2 MATERIAL INJURY TO THE OWNERS OF VESTED WATER RIGHTS AND
3 DECREEED CONDITIONAL WATER RIGHTS.

4 **SECTION 4. Effective date.** This act takes effect June 1, 2014.

5 **SECTION 5. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.