



HB21-1046

SHORT TITLE: Water Share Right Mutual Ditch Corporation

LONG TITLE: Concerning the use of a water right obtained through a mutual ditch corporation

SPONSORS: Reps. Arndt and Catlin/Senators Fields and Sonnenberg

COMMITTEES: House Agriculture, Livestock & Water Resources Committee

PURPOSE OF THE BILL: To state and clarify the nature and use of water rights held by mutual ditch corporations.

PROPONENTS OF THE BILL: Mutual ditch corporations

POTENTIAL STAKEHOLDERS: Shareholders in mutual ditch corporations, mutual ditch corporation directors, State Engineer's office and water rights administrators, Entities purchasing rights in mutual ditch corporations.

BACKGROUND: Over the course of the past year or two there have been ongoing discussions among mutual ditch corporations, their attorneys, and the State Engineer's office, specifically concerning turnback provisions and the rights of other shareholders to use water not being used by one shareholder which is held by the corporation.

Is this bill necessary this year? Proponents believe that there is a lack of clarity in statutes and case law that should be corrected.

How does the bill change current law? The bill creates a presumption that shares of stock owned by a shareholder in a mutual ditch corporation represent the right to use the water rights appropriated or purchased by the corporation; and corresponding rights to divert and deliver the shareholder's water right through a ditch, canal, reservoir or other works. The presumption may be changed by changing the corporation's articles or incorporation or bylaws. The bill authorizes these water rights to be limited to a pro rata amount at times when shareholder demand exceeds available supply. The bill clarifies that a shareholder's right to use water does not exclude others from using the unused portion held by the corporation. The bill also clarifies that statutes covering ditch and reservoir companies do not prevent a change of use by a shareholder or change approval standards by a water court.

Does the bill affect the prior appropriations system? No.

How is the bill implemented? The bill is implemented through the practices of mutual ditch companies using traditional practices. The bill sets out how a water court must construe the statute and states that the provisions of the bill shall not be applied to the following actions taken before the effective date: 1) any final water court decree entered; 2) any water court application for which a trial was held; or 3) to an appeal of any water court decision or decree resulting from such trial.

Practical considerations: N/A

Fiscal Impact: There is no fiscal impact statement.