

HB1130_L.007

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Agriculture, Natural Resources, & Energy.HB13-1130 be amended as follows:

1 Amend reengrossed bill, page 2, line 3, strike "(2) and (3) (c);" and
 2 substitute "(2), (3) (a), (3) (b), (3) (c), and (4);".

3 Page 2, after line 25 insert: .

4 "(a) ~~The AN applicant for approval of an interruptible water~~
 5 ~~supply agreement shall provide written notice of the application by~~
 6 ~~first-class mail or electronic mail to all parties who have subscribed to the~~
 7 ~~substitute water supply plan notification list, as described in section~~
 8 ~~37-92-308 (6), for the division or divisions in which the water right is~~
 9 ~~located and in which it will be used, and proof of such notice shall be~~
 10 ~~filed with the state engineer. MUST:~~

11 (I) SUBMIT TO THE WATER CLERK IN EACH WATER DIVISION IN
 12 WHICH A LOANED WATER RIGHT IS LOCATED A RESUME OF THE
 13 APPLICATION FOR APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
 14 AGREEMENT SUBMITTED TO THE STATE ENGINEER, AND THE WATER CLERK
 15 SHALL PUBLISH THE RESUMES IN THE MANNER SET FORTH IN SECTION
 16 37-92-302 (3) (a) AND (3) (b), NOTWITHSTANDING THE FACT THAT THE
 17 APPLICATIONS WERE FILED WITH THE STATE ENGINEER;

18 (II) FILE PROOF OF THE SUBMISSION OF THE RESUME TO THE WATER
 19 CLERK WITH THE STATE ENGINEER NOT LATER THAN TEN DAYS AFTER THE
 20 SUBMISSION;

21 (III) FILE PROOF OF THE NOTICE TO ALL PARTIES WHO HAVE
 22 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST,
 23 AS DESCRIBED IN SECTION 37-92-308 (6), WITH THE STATE ENGINEER
 24 WITHIN TEN DAYS AFTER PROVIDING THE NOTICE; AND

25 (IV) ENSURE THAT the application ~~shall be~~ IS accompanied by a
 26 detailed written report, prepared by a professional engineer or other
 27 professional acceptable to the state engineer, that evaluates the historical
 28 consumptive use, return flows, and the potential for material injury to
 29 other water rights relating to the interruptible water supply agreement,
 30 and that proposes conditions to prevent such injury AND MITIGATE SUCH
 31 IMPACTS. The state engineer shall give the owners of water rights
 32 ~~thirty-five~~ ONE HUNDRED TWENTY-SIX days after the date of mailing of
 33 ~~such~~ THE LAST notice REQUIRED UNDER THIS SECTION IS PROVIDED to file
 34 comments on the operation of the interruptible water supply agreement.
 35 Such comments ~~shall~~ MAY include any claim of injury or any terms and
 36 conditions that should be imposed upon the agreement so that it will not



1 cause injury to a party's water rights or decreed conditional water rights,
2 if such conditional rights will be exercised during operation of the
3 interruptible water supply agreement, and any other information the party
4 wishes the state engineer to consider in reviewing the application.

5 (b) The state engineer, after consideration of the comments from
6 any party submitting comments, shall make a determination of the
7 operation and administration of the interruptible water supply agreement
8 to assure that such operation and administration will effect only a
9 temporary change in the historical consumptive use of the water right in
10 a manner that will not cause injury to other water rights and decreed
11 conditional water rights, if such conditional rights will be exercised
12 during operation of the interruptible water supply agreement, and will not
13 impair compliance with any interstate compact. The interruptible water
14 supply agreement ~~shall~~ MUST include ~~but shall not be limited to,~~ a
15 quantification of the historical consumptive use of the water right, an
16 accurate description of the land where the water is decreed for use, and,
17 if the loaned water right is being used for irrigation, a plan to prevent
18 erosion and blowing soils, PROOF OF COMPLIANCE WITH DITCH COMPANY
19 BYLAWS, and a description of compliance with local county noxious weed
20 regulations and other land use provisions. The state engineer shall impose
21 such terms and conditions as are necessary to ensure that these standards
22 are met. In making the determinations specified in this paragraph (b), the
23 state engineer ~~shall~~ IS not be required to hold any formal hearing or
24 conduct any other formal proceedings, but may conduct a hearing or
25 formal proceeding if the state engineer finds it necessary to address the
26 issues. THE STATE ENGINEER'S APPROVAL OR DISAPPROVAL OF AN
27 APPLICATION FOR AN INTERRUPTIBLE WATER SUPPLY AGREEMENT
28 CONSTITUTES FINAL AGENCY ACTION SUBJECT TO APPEAL IN THE WATER
29 COURT IN THE WATER DIVISION IN WHICH THE LOANED WATER RIGHTS ARE
30 LOCATED."

31 Page 3, strike line 13 and substitute:

32 "(4) (a) When the state engineer approves or denies an
33 interruptible water supply agreement, the state engineer shall serve a copy
34 of the decision upon all parties to the application by first-class mail or, if
35 such parties have so elected, by electronic mail. Neither the approval nor
36 the denial of the agreement by the state engineer ~~shall create~~ CREATES any
37 presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES as a
38 defense in any legal action that may be initiated concerning the
39 interruptible water supply agreement. ~~Any~~ THE WATER JUDGE SHALL



1 EXPEDITE AN appeal of a decision made by the state engineer concerning
2 the operation of an interruptible water supply agreement pursuant to this
3 section ~~shall be expedited, shall be~~ ONLY UPON THE REQUEST OF A PARTY
4 TO THE APPEAL. THE APPEAL IS limited to the ~~issue~~ ISSUES of injury. and
5 ~~shall~~ THE APPEAL MUST be made within thirty-five days after mailing of
6 the decision to the water judge in the applicable water division. All
7 parties to the appeal shall pay to the water clerk a fee to cover the direct
8 costs associated with the ANY expedited appeal. FOR PURPOSES OF
9 DETERMINING FILING FEES, THE APPLICANT OR COMMENTER THAT
10 INITIATES THE APPEAL SHALL PAY FEES ESTABLISHED FOR WATER COURT
11 CHANGE APPLICANTS, AND ALL OTHERS SHALL PAY FEES ESTABLISHED FOR
12 PERSONS FILING STATEMENTS OF OPPOSITION. The water judge shall hear
13 and determine such appeal DE NOVO using the procedures and standards
14 set forth in sections 37-92-304 and 37-92-305 for determination of
15 ~~matters~~ CHANGES OF WATER RIGHTS AND AUGMENTATION PLANS
16 rereferred to the water judge by the referee; except that the water judge
17 shall not deem any failure to appeal all or any part of the decision of the
18 state engineer or failure to state any grounds for appeal to preclude any
19 party from raising any claims of injury in a future proceeding before the
20 water judge. The proponent of the interruptible water supply agreement
21 ~~shall be~~ IS deemed to be the applicant for purposes of application of such
22 procedures and standards. Moneys from such fee shall be transmitted to
23 the state treasurer and deposited in the water adjudication cash fund,
24 which fund is hereby created in the state treasury. The general assembly
25 shall appropriate moneys in the fund for the judicial department's
26 expedited adjudications pursuant to this section.

27 (b) A party to the original application may file comments
28 concerning potential injury to such A party's water rights or decreed
29 conditional water rights due to the operation of the interruptible water
30 supply agreement with the state engineer by January 1 of the year
31 following the first year that the interruptible water supply agreement has
32 been exercised. The procedures of subsection (3) of this section regarding
33 notice, opportunity to comment, and the state engineer's decision, and the
34 procedures of this subsection (4) regarding an appeal of such decision,
35 shall again be followed with regard to such party's comments.

36 (6) THE STATE ENGINEER MAY ALSO APPROVE AN INTERRUPTIBLE
37 WATER SUPPLY AGREEMENT PURSUANT TO THIS SUBSECTION (6) FOR
38 ANOTHER TEN-YEAR PERIOD WITHIN WATER DISTRICTS 14, 17, AND 67 IN
39 WATER DIVISION 2 IF:

40 (a) (I) ALL OF THE SUBSTANTIVE AND PROCEDURAL".



1 Page 3, line 14, strike "THROUGH" and substitute "TO".

2 Page 3, strike lines 22 through 27.

3 Page 4, strike lines 1 through 14 and substitute:

4 "(c) THE STATE ENGINEER SHALL NOT APPROVE AN APPLICATION
5 FOR SUBSEQUENT APPROVAL THAT WOULD TRANSFER OR FACILITATE THE
6 TRANSFER OF WATER ACROSS THE CONTINENTAL DIVIDE BY DIRECT
7 DIVERSION, EXCHANGE, OR OTHERWISE; AND".

8 Reletter succeeding paragraphs accordingly.

9 Page 5, strike lines 9 through 21.

** ** ** ** **

