

**PROPOSED REVISION TO COLORADO LAW PERTAINING TO THE TIME PERIOD  
FOR FILING APPLICATIONS FOR REASONABLE DILIGENCE IN THE  
DEVELOPMENT OF CONDITIONAL WATER RIGHTS**

By

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Section 37-92-301(4)(a), C.R.S., is proposed to be amended to extend the time period for filing an application for finding of reasonable diligence in the development of conditional water rights from every six years to every ten years. The following specific legislative change would need to be enacted:

**37-92-301. Administration and distribution of waters.** (4) (a) (I) In every ~~sixth~~TENTH calendar year after the calendar year in which a water right is conditionally decreed, or in which a finding of reasonable diligence has been decreed, the owner or user thereof, if such owner or user desires to maintain the same, shall file an application for a finding of reasonable diligence, or said conditional water right shall be considered abandoned.

(II) If a conditional underground water right requires construction of a well, the expiration of the permit issued for the construction of such well by the state engineer pursuant to section 37-90-137(1) shall not be the sole basis for a determination of abandonment pursuant to subparagraph (I) of this paragraph (a).

(III) The judgment and decree of the court shall specify the month and calendar year in which a subsequent application for a finding of reasonable diligence shall be filed with the water clerk pursuant to section 37-92-302(1). A subsequent application shall be filed during the same month as the previous decree was entered every ~~six~~TEN years after such entry of the decree until the right is made absolute or otherwise disposed of.

(IV) The provisions of this paragraph (a) shall supersede any contrary provision or requirement of a previous conditional decree or determination of reasonable diligence.

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July 15, 2013

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By email: david.beaujon@state.co.us

Re: Agenda and Bill Recommendations

Dear Mr. Beaujon:

I am writing in response to Senator Gail Schwartz's June 19, 2013 letter requesting agenda and bill recommendations for consideration by the Water Resources Review Committee during the 2013 interim. As discussed below, I suggest a relatively simple legislative change that could have a very significant impact on improving the efficiency and cost of water right proceedings and provide significant economic benefits to water users and the State of Colorado.

My suggestion arises, in part, out of a proceeding that I participated in for a client regarding an application for finding of reasonable diligence in the development of a conditional water right. Pursuant to Section 37-92-301(4)(a), C.R.S., every owner of a conditional water right must file an application for finding of reasonable diligence in the development of the conditional water right ("diligence application") every six years or the water right will be abandoned. My client (1) filed the appropriate diligence application in the Water Court, (2) paid the cost of publication, (3) had the application reviewed by the Water Referee, (4) paid for the drafting and submission of documentation to the Water Referee, (5) obtained a ruling from the Water Referee and (6) obtained a final decree from the Water Court. The entire proceeding was not contested by any person, but it ended up costing the client a significant amount of money and consumed significant Water Court time and resources.

As I considered this matter, it appeared to me that the costs to water users and the costs incurred by the State of Colorado could be reduced by simply extending the time period for filing diligence applications from six years to ten years. There is precedence for extending the time for

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filing diligence applications, as the original time period for filing diligence applications was two years, and the time period was extended to four years, and then to six years. I am attaching a memorandum that discusses the legislative history of the time line for filing diligence applications.

There are several other benefits and reasons for extending the diligence application time periods from six year to ten years, which can be summarized as follows:

- Beginning in 2002, Colorado has been in significant periods of drought and in some locations of the State, the drought has been the most severe in recorded history. Nevertheless, during the period since 2002 many Colorado water users have been working to develop additional, important new water supply projects. A review of the records of the applications for new conditional water rights filed between 2002 and 2012 indicates that approximately twenty-five percent of the outstanding conditional water right claims were filed since 2002:

Water Division	Stream Basin	Total Number of Conditional Water Rights			Conditional Water Rights Appropriated After 2001					
		Direct Flow	Storage	Total	Direct Flow	Storage	Total	Direct Flow	Storage	Total
1	South Platte	2191	951	3142	678	158	836	30.9%	16.6%	26.6%
2	Arkansas	354	134	488	85	34	119	24.0%	25.4%	24.4%
3	Rio Grande	104	15	119	3	0	3	2.9%	0.0%	2.5%
4	Gunnison	1495	655	2150	526	273	799	35.2%	41.7%	37.2%
5	Colorado	2849	1234	4083	422	252	674	14.8%	20.4%	16.5%
6	Yampa/White	567	261	828	195	80	275	34.4%	30.7%	33.2%
7	San Juan/Delores	946	260	1206	284	76	360	30.0%	29.2%	29.9%
	<b>Total</b>	<b>8506</b>	<b>3510</b>	<b>12016</b>	<b>2193</b>	<b>873</b>	<b>3066</b>	<b>25.8%</b>	<b>24.9%</b>	<b>25.5%</b>

Source: Colorado Division of Water Resources

- Because of the additional conditional water right determinations since 2001, there will be approximately 511 additional diligence applications filed each year. Extending the time period from six years to ten years would reduce the additional diligence applications to approximately 300 per year, or a reduction in case filings of approximately 211 cases per year.
- Within the South Platte River Basin, there are over 2,500 agricultural and municipal water supply wells that rely, in part, on conditional water rights. Over 2,000 of the wells rely on conditional water rights that were obtained after 2001. An extended time period for diligence applications would save the water users the cost of filing and completing the diligence application, which is money that could be used in developing and completing the conditional water right.

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- The experience of many water users is that the time required for obtaining permits, financing and construction of water projects has not decreased, but has only increased. The extended time period would allow water users to focus their energies and funds on water supply development and not on Water Court proceedings.
- The extension of the time period for diligence applications from six years to ten years would be consistent with the ten year period for reviewing potential abandonment of absolute water rights. *See* Section 37-92-401, C.R.S.

Based on the foregoing, I suggest that Section 37-92-301(4)(a), C.R.S. be amended to extend the time period for filing a diligence application from every six years to every ten years. The following specific legislative change would need to be enacted:

**37-92-301. Administration and distribution of waters.** (4) (a) (I) In every ~~six~~TENTH calendar year after the calendar year in which a water right is conditionally decreed, or in which a finding of reasonable diligence has been decreed, the owner or user thereof, if such owner or user desires to maintain the same, shall file an application for a finding of reasonable diligence, or said conditional water right shall be considered abandoned.

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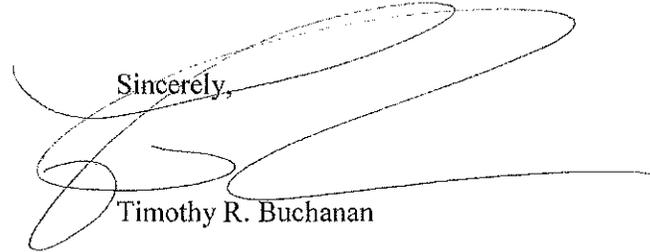
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I request that extension of the time period for diligence applications be added as an agenda item for consideration by the Water Resources Review Committee. Please contact me if you have any comments or questions.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned over the word "Sincerely,".

Timothy R. Buchanan