

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 18, 2013
Date

Committee on Agriculture, Livestock, & Natural Resources.

After consideration on the merits, the Committee recommends the following:

HB13-1130 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 **"SECTION 1.** In Colorado Revised Statutes, 37-92-309, **amend**
4 **(2) and (3) (c); and add (6) as follows:**

5 **37-92-309. Interruptible water supply agreements - special**
6 **review procedures - rules - water adjudication cash fund - legislative**
7 **declaration.** (2) For purposes of this section:

8 (a) "Interruptible water supply agreement" means an option
9 agreement between two or more water right owners whereby:

10 (a) (I) The ~~loaning~~ OWNER OF THE LOANED water right ~~owner~~
11 agrees that, during the term of ~~such~~ THE agreement, it will stop its use of
12 the loaned water right for a specified length of time if the option is
13 exercised by the borrowing water right owner in accordance with the
14 agreement; and

15 (b) (II) The borrowing water right owner may divert the loaned
16 water right for such owner's purposes, subject to the priority system and
17 subject to temporary approval by the state engineer in accordance with
18 this section.

19 (b) "LOANED WATER RIGHT" MEANS ANY IDENTIFIED WATER
20 RIGHT, OR IDENTIFIED PORTION OF A WATER RIGHT, SPECIFICALLY
21 DESCRIBED IN THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

22 (3) The state engineer is authorized to approve and administer
23 interruptible water supply agreements that permit a temporary change in

1 the point of diversion, location of use, and type of use of an absolute
2 water right without the need for an adjudication pursuant to this article,
3 subject to the following:

4 (c) An interruptible water supply agreement approved pursuant to
5 this section ~~shall not~~ CANNOT be exercised for more than three years in a
6 ten-year period, for which only a single approval is required. The ten-year
7 period ~~shall begin~~ BEGINS with the granting of ~~such~~ THE approval. A
8 water right subject to the agreement under this section ~~may not~~ CANNOT
9 use section 37-92-308 (5). THE STATE ENGINEER SHALL NOT APPROVE an
10 interruptible water supply agreement ~~approved~~ pursuant to this subsection
11 (3) ~~shall not be approved~~ for another ten-year period; except:

12 (I) ~~that~~, If ~~such~~ THE agreement has not been exercised during the
13 term of the agreement, an applicant may reapply one time by repeating the
14 application process pursuant to this subsection (3); AND

15 (II) AS SPECIFIED IN SUBSECTION (6) OF THIS SECTION.

16 (6) (a) (I) ALL OF THE SUBSTANTIVE AND PROCEDURAL
17 REQUIREMENTS OF SUBSECTIONS (2) THROUGH (5) OF THIS SECTION APPLY
18 TO A SUBSEQUENT APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
19 AGREEMENT EXCEPT AS SPECIFICALLY PROVIDED OTHERWISE IN THIS
20 SUBSECTION (6).

21 (II) THIS SUBSECTION (6) APPLIES ONLY TO A SUBSEQUENT
22 APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY AGREEMENT.

23 (b) A PERSON MAY APPLY FOR NO MORE THAN TWO SUBSEQUENT
24 APPROVALS OF THE SAME INTERRUPTIBLE WATER SUPPLY AGREEMENT.

25 (c) AN APPLICANT FOR SUBSEQUENT APPROVAL OF AN
26 INTERRUPTIBLE WATER SUPPLY AGREEMENT MUST:

27 (I) SUBMIT TO THE WATER CLERK IN EACH WATER DIVISION IN
28 WHICH A LOANED WATER RIGHT IS LOCATED A RESUME OF THE
29 APPLICATION FOR APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
30 AGREEMENT SUBMITTED TO THE STATE ENGINEER, AND THE WATER CLERK
31 SHALL PUBLISH THE RESUMES IN THE MANNER SET FORTH IN SECTION
32 37-92-302 (3) (a) AND (3) (b), NOTWITHSTANDING THE FACT THAT THE
33 APPLICATIONS WERE FILED WITH THE STATE ENGINEER;

34 (II) FILE PROOF OF THE SUBMISSION OF THE RESUME TO THE WATER
35 CLERK WITH THE STATE ENGINEER NOT LATER THAN TEN DAYS AFTER THE
36 SUBMISSION; AND

37 (III) FILE PROOF OF THE NOTICE TO ALL PARTIES WHO HAVE
38 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST,
39 AS DESCRIBED IN SECTION 37-92-308 (6), WITH THE STATE ENGINEER
40 WITHIN TEN DAYS AFTER PROVIDING THE NOTICE.

41 (d) OWNERS OF WATER RIGHTS HAVE UNTIL THE LAST DAY OF THE

1 FOURTH MONTH FOLLOWING THE MONTH IN WHICH THE RESUME WAS
2 SUBMITTED TO THE WATER CLERK TO FILE COMMENTS ON THE OPERATION
3 OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

4 (e) THE STATE ENGINEER MAY APPROVE A SUBSEQUENT
5 APPLICATION FOR INTERRUPTIBLE WATER SUPPLY AGREEMENT UNDER THIS
6 SUBSECTION (6) ONLY:

7 (I) AFTER MAKING A DETERMINATION OF THE OPERATION AND
8 ADMINISTRATION OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT TO
9 ASSURE THAT SUCH OPERATION AND ADMINISTRATION WILL NOT PERMIT
10 A BORROWING WATER RIGHT USER TO RELY ON THE EXERCISE OF MULTIPLE
11 INTERRUPTIBLE WATER SUPPLY AGREEMENTS AS ITS PRIMARY SOURCE OF
12 SUPPLY;

13 (II) IF THE TERMS AND CONDITIONS IMPOSED PURSUANT TO
14 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION ARE NO LESS
15 RESTRICTIVE THAN THOSE IMPOSED UPON PREVIOUSLY APPROVED
16 APPLICATIONS;

17 (III) IF THE AGREEMENT DOES NOT INCLUDE A LOANED WATER
18 RIGHT THAT HAS ALREADY BEEN APPROVED AS A LOANED WATER RIGHT IN
19 A SEPARATE, UNEXPIRED INTERRUPTIBLE WATER SUPPLY AGREEMENT; AND

20 (IV) IF THE LOANED WATER RIGHT SUBJECT TO THE AGREEMENT IS
21 NOT SUBJECT TO MORE THAN TWO SUBSEQUENT APPROVALS REGARDLESS
22 OF THE APPLICANT, AND ANY SUCH SUBSEQUENT APPROVAL CANNOT TAKE
23 EFFECT UNTIL AFTER ANY PRIOR TEN-YEAR APPROVAL PERIOD HAS
24 EXPIRED.

25 (f) THE STATE ENGINEER'S APPROVAL OR DISAPPROVAL OF A
26 SUBSEQUENT APPLICATION FOR INTERRUPTIBLE WATER SUPPLY
27 AGREEMENT UNDER THIS SUBSECTION (6) CONSTITUTES FINAL AGENCY
28 ACTION SUBJECT TO APPEAL IN THE WATER COURT IN THE WATER DIVISION
29 IN WHICH THE LOANED WATER RIGHTS ARE LOCATED.

30 (g) THE WATER JUDGE SHALL EXPEDITE AN APPEAL OF THE STATE
31 ENGINEER'S DECISION ONLY UPON THE REQUEST OF ANY PARTY TO THE
32 APPEAL.

33 (h) FOR PURPOSES OF DETERMINING FILING FEES, THE APPLICANT
34 OR COMMENTER THAT INITIATES THE APPEAL SHALL PAY FEES
35 ESTABLISHED FOR WATER COURT CHANGE APPLICANTS, AND ALL OTHERS
36 SHALL PAY FEES ESTABLISHED FOR PERSONS FILING STATEMENTS OF
37 OPPOSITION.

38 **SECTION 2. Act subject to petition - effective date -**
39 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
40 the expiration of the ninety-day period after final adjournment of the
41 general assembly (August 7, 2013, if adjournment sine die is on May 8,

1 2013); except that, if a referendum petition is filed pursuant to section 1
2 (3) of article V of the state constitution against this act or an item, section,
3 or part of this act within such period, then the act, item, section, or part
4 will not take effect unless approved by the people at the general election
5 to be held in November 2014 and, in such case, will take effect on the
6 date of the official declaration of the vote thereon by the governor.
7 (2) This act applies to applications filed on or after the applicable
8 effective date of this act."

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