

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 17, 2013
Date

Committee on Agriculture, Natural Resources, & Energy.

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 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,

1 AS DESCRIBED IN SECTION 37-92-308 (6), WITH THE STATE ENGINEER
2 WITHIN TEN DAYS AFTER PROVIDING THE NOTICE; AND

3 (IV) ENSURE THAT the application ~~shall be~~ IS accompanied by a
4 detailed written report, prepared by a professional engineer or other
5 professional acceptable to the state engineer, that evaluates the historical
6 consumptive use, return flows, ~~and~~ the potential for material injury to
7 other water rights relating to the interruptible water supply agreement,
8 and that proposes conditions to prevent such injury AND MITIGATE SUCH
9 IMPACTS. The state engineer shall give the owners of water rights
10 ~~thirty-five~~ ONE HUNDRED TWENTY-SIX days after the date ~~of mailing of~~
11 ~~such~~ THE LAST notice REQUIRED UNDER THIS SECTION IS PROVIDED to file
12 comments on the operation of the interruptible water supply agreement.
13 Such comments ~~shall~~ MAY include any claim of injury or any terms and
14 conditions that should be imposed upon the agreement so that it will not
15 cause injury to a party's water rights or decreed conditional water rights,
16 if such conditional rights will be exercised during operation of the
17 interruptible water supply agreement, and any other information the party
18 wishes the state engineer to consider in reviewing the application.

19 (b) The state engineer, after consideration of the comments from
20 any party submitting comments, shall make a determination of the
21 operation and administration of the interruptible water supply agreement
22 to assure that such operation and administration will effect only a
23 temporary change in the historical consumptive use of the water right in
24 a manner that will not cause injury to other water rights and decreed
25 conditional water rights, if such conditional rights will be exercised
26 during operation of the interruptible water supply agreement, and will not
27 impair compliance with any interstate compact. The interruptible water
28 supply agreement ~~shall~~ MUST include ~~but shall not be limited to;~~ a
29 quantification of the historical consumptive use of the water right, an
30 accurate description of the land where the water is decreed for use, and,
31 if the loaned water right is being used for irrigation, a plan to prevent
32 erosion and blowing soils, PROOF OF COMPLIANCE WITH DITCH COMPANY
33 BYLAWS, and a description of compliance with local county noxious weed
34 regulations and other land use provisions. The state engineer shall impose
35 such terms and conditions as are necessary to ensure that these standards
36 are met. In making the determinations specified in this paragraph (b), the
37 state engineer ~~shall~~ IS not ~~be~~ required to hold any formal hearing or
38 conduct any other formal proceedings, but may conduct a hearing or
39 formal proceeding if the state engineer finds it necessary to address the
40 issues. THE STATE ENGINEER'S APPROVAL OR DISAPPROVAL OF AN
41 APPLICATION FOR AN INTERRUPTIBLE WATER SUPPLY AGREEMENT

1 CONSTITUTES FINAL AGENCY ACTION SUBJECT TO APPEAL IN THE WATER
2 COURT IN THE WATER DIVISION IN WHICH THE LOANED WATER RIGHTS ARE
3 LOCATED."

4 Page 3, strike line 13 and substitute:

5 "(4) (a) When the state engineer approves or denies an
6 interruptible water supply agreement, the state engineer shall serve a copy
7 of the decision upon all parties to the application by first-class mail or, if
8 such parties have so elected, by electronic mail. Neither the approval nor
9 the denial of the agreement by the state engineer ~~shall create~~ CREATES any
10 presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES as a
11 defense in any legal action that may be initiated concerning the
12 interruptible water supply agreement. ~~Any~~ THE WATER JUDGE SHALL
13 EXPEDITE AN appeal of a decision made by the state engineer concerning
14 the operation of an interruptible water supply agreement pursuant to this
15 section ~~shall be expedited, shall be~~ ONLY UPON THE REQUEST OF A PARTY
16 TO THE APPEAL. THE APPEAL IS limited to the ~~issue~~ ISSUES of injury. ~~and~~
17 ~~shall~~ THE APPEAL MUST be made within thirty-five days after mailing of
18 the decision to the water judge in the applicable water division. All
19 parties to the appeal shall pay to the water clerk a fee to cover the direct
20 costs associated with ~~the~~ ANY expedited appeal. FOR PURPOSES OF
21 DETERMINING FILING FEES, THE APPLICANT OR COMMENTER THAT
22 INITIATES THE APPEAL SHALL PAY FEES ESTABLISHED FOR WATER COURT
23 CHANGE APPLICANTS, AND ALL OTHERS SHALL PAY FEES ESTABLISHED FOR
24 PERSONS FILING STATEMENTS OF OPPOSITION. The water judge shall hear
25 and determine such appeal DE NOVO using the procedures and standards
26 set forth in sections 37-92-304 and 37-92-305 for determination of
27 ~~matters~~ CHANGES OF WATER RIGHTS AND AUGMENTATION PLANS
28 rereferred to the water judge by the referee; except that the water judge
29 shall not deem any failure to appeal all or any part of the decision of the
30 state engineer or failure to state any grounds for appeal to preclude any
31 party from raising any claims of injury in a future proceeding before the
32 water judge. The proponent of the interruptible water supply agreement
33 ~~shall be~~ IS deemed to be the applicant for purposes of application of such
34 procedures and standards. Moneys from such fee shall be transmitted to
35 the state treasurer and deposited in the water adjudication cash fund,
36 which fund is hereby created in the state treasury. The general assembly
37 shall appropriate moneys in the fund for the judicial department's
38 expedited adjudications pursuant to this section.

39 (b) A party to the original application may file comments

1 concerning potential injury to ~~such~~ A party's water rights or decreed
2 conditional water rights due to the operation of the interruptible water
3 supply agreement with the state engineer by January 1 of the year
4 following the first year that the interruptible water supply agreement has
5 been exercised. The procedures of subsection (3) of this section regarding
6 notice, opportunity to comment, and the state engineer's decision, and the
7 procedures of this subsection (4) regarding an appeal of such decision,
8 shall again be followed with regard to such party's comments.

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

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

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

15 Page 3, strike lines 22 through 27.

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

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

21 Reletter succeeding paragraphs accordingly.

22 Page 5, strike lines 9 through 21.

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