

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

DRAFT
9.18.12

BILL 5

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LLS NO. 13-0111.01 Thomas Morris x4218

INTERIM COMMITTEE BILL

Water Resources Review Committee

SHORT TITLE: "Protect Water Right Ownership Rights"

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON A LANDOWNER'S ABILITY TO IMPOSE**
102 **CONDITIONS ON A WATER RIGHT OWNER AS A CONDITION OF**
103 **PERMISSION TO USE LAND.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. The bill specifies, in the contexts of rights-of-way for water rights and the basic tenets of Colorado water law, that:

- A landowner cannot demand as a condition of granting a

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

right-of-way or special use permit, and a court cannot order as a condition of an eminent domain proceeding, that a water right or conditional water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right; and

- Any such condition is void and unenforceable as against public policy.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 37-86-102 as
3 follows:

4 **37-86-102. Right-of-way through other lands.** (1) Any person
5 owning a water right or conditional water right ~~shall be~~ IS entitled to a
6 right-of-way through the lands ~~which~~ THAT lie between the point of
7 diversion and point of use or proposed use for the purpose of transporting
8 water for beneficial use in accordance with ~~said~~ THE water right or
9 conditional water right.

10 (2) A LANDOWNER SHALL NOT DEMAND AS A CONDITION OF
11 GRANTING A RIGHT-OF-WAY OR SPECIAL USE PERMIT, AND A COURT SHALL
12 NOT ORDER AS A CONDITION OF AN EMINENT DOMAIN PROCEEDING
13 AUTHORIZED PURSUANT TO SECTION 37-86-104 (1), THAT THE OWNER OF
14 A WATER RIGHT OR CONDITIONAL WATER RIGHT ASSIGN TO THE
15 LANDOWNER PARTIAL OR JOINT OWNERSHIP OF THE WATER RIGHT OR LIMIT
16 THE ALIENABILITY OF THE WATER RIGHT. ANY SUCH CONDITION IS VOID
17 AND UNENFORCEABLE AS AGAINST PUBLIC POLICY.

18 **SECTION 2.** In Colorado Revised Statutes, 37-92-102, **add** (7)
19 as follows:

20 **37-92-102. Legislative declaration - basic tenets of Colorado**
21 **water law.** (7) A LANDOWNER SHALL NOT DEMAND AS A CONDITION OF
22 GRANTING A RIGHT-OF-WAY OR SPECIAL USE PERMIT, AND A COURT SHALL

1 NOT ORDER AS A CONDITION OF AN EMINENT DOMAIN PROCEEDING
2 AUTHORIZED PURSUANT TO SECTION 37-86-104 (1), THAT THE OWNER OF
3 A WATER RIGHT OR CONDITIONAL WATER RIGHT ASSIGN TO THE
4 LANDOWNER PARTIAL OR JOINT OWNERSHIP OF THE WATER RIGHT OR LIMIT
5 THE ALIENABILITY OF THE WATER RIGHT. ANY SUCH CONDITION IS VOID
6 AND UNENFORCEABLE AS AGAINST PUBLIC POLICY.

7 **SECTION 3. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 7, 2013, if adjournment sine die is on May 8,
11 2013); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2014 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) The provisions of this act apply to acts occurring on or after
18 the applicable effective date of this act.

19 <{*Do you want a safety clause or a specific effective date?*}>