

HB1130_L.003

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Agriculture, Livestock, & Natural Resources.

HB13-1130 be amended as follows:

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

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

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



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

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

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

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

11 (c) AN APPLICANT FOR SUBSEQUENT APPROVAL OF AN
12 INTERRUPTIBLE WATER SUPPLY AGREEMENT MUST:

13 (I) SUBMIT TO THE WATER CLERK IN EACH WATER DIVISION IN
14 WHICH A LOANED WATER RIGHT IS LOCATED A RESUME OF THE
15 APPLICATION FOR APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
16 AGREEMENT SUBMITTED TO THE STATE ENGINEER, AND THE WATER CLERK
17 SHALL PUBLISH THE RESUMES IN THE MANNER SET FORTH IN SECTION
18 37-92-302 (3) (a) AND (3) (b), NOTWITHSTANDING THE FACT THAT THE
19 APPLICATIONS WERE FILED WITH THE STATE ENGINEER;

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

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

27 (d) OWNERS OF WATER RIGHTS HAVE UNTIL THE LAST DAY OF THE
28 FOURTH MONTH FOLLOWING THE MONTH IN WHICH THE RESUME WAS
29 SUBMITTED TO THE WATER CLERK TO FILE COMMENTS ON THE OPERATION
30 OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

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

34 (I) AFTER MAKING A DETERMINATION OF THE OPERATION AND
35 ADMINISTRATION OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT TO
36 ASSURE THAT SUCH OPERATION AND ADMINISTRATION WILL NOT PERMIT
37 A BORROWING WATER RIGHT USER TO RELY ON THE EXERCISE OF MULTIPLE
38 INTERRUPTIBLE WATER SUPPLY AGREEMENTS AS ITS PRIMARY SOURCE OF
39 SUPPLY;

40 (II) IF THE TERMS AND CONDITIONS IMPOSED PURSUANT TO
41 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION ARE NO LESS

1 RESTRICTIVE THAN THOSE IMPOSED UPON PREVIOUSLY APPROVED
2 APPLICATIONS;

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

6 (IV) IF THE LOANED WATER RIGHT SUBJECT TO THE AGREEMENT IS
7 NOT SUBJECT TO MORE THAN TWO SUBSEQUENT APPROVALS REGARDLESS
8 OF THE APPLICANT, AND ANY SUCH SUBSEQUENT APPROVAL CANNOT TAKE
9 EFFECT UNTIL AFTER ANY PRIOR TEN-YEAR APPROVAL PERIOD HAS
10 EXPIRED.

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

16 (g) THE WATER JUDGE SHALL EXPEDITE AN APPEAL OF THE STATE
17 ENGINEER'S DECISION ONLY UPON THE REQUEST OF ANY PARTY TO THE
18 APPEAL.

19 (h) FOR PURPOSES OF DETERMINING FILING FEES, THE APPLICANT
20 OR COMMENTER THAT INITIATES THE APPEAL SHALL PAY FEES
21 ESTABLISHED FOR WATER COURT CHANGE APPLICANTS, AND ALL OTHERS
22 SHALL PAY FEES ESTABLISHED FOR PERSONS FILING STATEMENTS OF
23 OPPOSITION.

24 **SECTION 2. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly (August 7, 2013, if adjournment sine die is on May 8,
28 2013); except that, if a referendum petition is filed pursuant to section 1
29 (3) of article V of the state constitution against this act or an item, section,
30 or part of this act within such period, then the act, item, section, or part
31 will not take effect unless approved by the people at the general election
32 to be held in November 2014 and, in such case, will take effect on the
33 date of the official declaration of the vote thereon by the governor.

34 (2) This act applies to applications filed on or after the applicable
35 effective date of this act."

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