

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 7, 2005
Date

Committee on Agriculture, Livestock, & Natural Resources.

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

HB05-1185 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 3, strike lines 4 through 6 and substitute the
2 following:

3 "SECTION 2. 37-92-308, Colorado Revised Statutes, is amended
4 BY THE ADDITION OF A NEW SUBSECTION to read:

5 **37-92-308. Substitute water supply plans - special procedures**
6 **for review - water adjudication cash fund - legislative declaration -**
7 **repeal.** (10) (a) BEGINNING JANUARY 1, 2005, FOR NEW WATER USE
8 PLANS INVOLVING A CHANGE OF WATER RIGHT, IF NO APPLICATION FOR A
9 CHANGE OF WATER RIGHT HAS BEEN FILED WITH A WATER COURT AND THE
10 PROPOSED CHANGE IN USE OF THE WATER WILL BE FOR A LIMITED
11 DURATION NOT TO EXCEED FIVE YEARS, THE STATE ENGINEER MAY
12 APPROVE SUCH CHANGE AS A SUBSTITUTE WATER SUPPLY PLAN IF THE
13 FOLLOWING CONDITIONS ARE MET:

14 (I) THE APPLICANT HAS FILED A REQUEST FOR APPROVAL OF THE
15 SUBSTITUTE WATER SUPPLY PLAN WITH THE STATE ENGINEER;

16 (II) THE APPLICANT HAS PROVIDED WRITTEN NOTICE OF THE
17 REQUEST FOR APPROVAL OF THE SUBSTITUTE WATER SUPPLY PLAN BY
18 FIRST-CLASS MAIL OR ELECTRONIC MAIL TO ALL PARTIES WHO HAVE
19 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST
20 FOR THE WATER DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED AND
21 PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER;

1 (III) THE STATE ENGINEER HAS GIVEN THE OWNERS OF WATER
2 RIGHTS AND DECREED CONDITIONAL WATER RIGHTS THIRTY DAYS AFTER
3 THE DATE OF MAILING OF SUCH NOTICE TO FILE COMMENTS ON THE
4 SUBSTITUTE WATER SUPPLY PLAN. SUCH COMMENTS SHALL INCLUDE ANY
5 CLAIM OF INJURY OR ANY TERMS AND CONDITIONS THAT SHOULD BE
6 IMPOSED UPON THE PLAN TO PREVENT INJURY TO A PARTY'S WATER RIGHTS
7 OR DECREED CONDITIONAL WATER RIGHTS AND ANY OTHER INFORMATION
8 THE OPPOSER WISHES THE STATE ENGINEER TO CONSIDER IN REVIEWING
9 THE SUBSTITUTE WATER SUPPLY PLAN REQUEST.

10 (IV) THE STATE ENGINEER, AFTER CONSIDERATION OF THE
11 COMMENTS RECEIVED, HAS DETERMINED THAT THE OPERATION AND
12 ADMINISTRATION OF SUCH PLAN WILL REPLACE ALL OUT-OF-PRIORITY
13 DEPLETIONS IN TIME, LOCATION, AND AMOUNT AND WILL OTHERWISE
14 PREVENT INJURY TO OTHER WATER RIGHTS AND DECREED CONDITIONAL
15 WATER RIGHTS, INCLUDING WATER QUALITY AND CONTINUITY TO MEET
16 THE REQUIREMENTS OF USE TO WHICH THE SENIOR APPROPRIATION HAS
17 NORMALLY BEEN PUT, PURSUANT TO SECTION 37-80-120(3) AND WILL NOT
18 IMPAIR COMPLIANCE WITH ANY INTERSTATE COMPACTS. AN APPROVAL OF
19 A TEMPORARY CHANGE OF WATER RIGHT UNDER THIS SUBSECTION (10)
20 SHALL INCLUDE PROVISIONS FOR REPLACEMENT OF HISTORICAL RETURN
21 FLOWS IN A MANNER SUFFICIENT TO PREVENT INJURY TO VESTED WATER
22 RIGHTS AND DECREED CONDITIONAL WATER RIGHTS, AND SHALL REQUIRE
23 THAT THE APPLICANT DEMONSTRATE THAT THE LANDS IRRIGATED BY THE
24 WATER RIGHT FOR WHICH A TEMPORARY CHANGE OF USE IS SOUGHT WILL
25 NOT BE IRRIGATED BY THE WATER RIGHT FOR THE DURATION OF THE
26 ALTERNATE USE. IF RETURN FLOW OBLIGATIONS ARE EXPECTED TO OCCUR
27 FOR A PERIOD OF LONGER THAN FIVE YEARS AS A RESULT OF THE
28 TEMPORARY CHANGE IN USE, THE APPROVAL SHALL CONTAIN A PROVISION
29 REQUIRING REPLACEMENT OF THESE DELAYED RETURN FLOWS AS
30 NECESSARY FOR THE PROTECTION OF VESTED WATER RIGHTS AND DECREED
31 CONDITIONAL RIGHTS FOR THE FULL TIME PERIOD IN WHICH THEY ARE
32 EXPECTED TO OCCUR, AND SUCH PROVISION SHALL BE A BINDING
33 OBLIGATION UPON THE APPLICANT, ENFORCEABLE BY THE STATE ENGINEER
34 FOR SO LONG AS THE RETURN FLOW OBLIGATIONS ARE EXPECTED TO
35 OCCUR. THE STATE ENGINEER SHALL IMPOSE SUCH TERMS AND
36 CONDITIONS AS ARE NECESSARY TO ENSURE THAT THESE STANDARDS ARE
37 MET. IN MAKING THE DETERMINATIONS SPECIFIED IN THIS SUBPARAGRAPH
38 (IV), THE STATE ENGINEER SHALL NOT BE REQUIRED TO HOLD ANY FORMAL
39 HEARINGS OR CONDUCT ANY OTHER FORMAL PROCEEDINGS, BUT MAY
40 CONDUCT A HEARING OR FORMAL PROCEEDING IF THE STATE ENGINEER
41 FINDS IT NECESSARY TO ADDRESS THE ISSUES.

1 (b) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO
2 THIS SUBSECTION (10) SHALL NOT BE APPROVED FOR A PERIOD OF MORE
3 THAN ONE YEAR; EXCEPT THAT AN APPLICANT MAY REQUEST THE RENEWAL
4 OF A PLAN BY REPEATING THE APPLICATION PROCESS DESCRIBED IN THIS
5 SUBSECTION (10). IN NO EVENT SHALL ANY TEMPORARY CHANGE IN USE
6 APPROVED PURSUANT TO THIS SUBSECTION (10) BE APPROVED MORE THAN
7 FIVE TIMES FOR ANY SINGLE WATER RIGHT OR INTEREST THEREIN. FOR THE
8 PURPOSES OF THIS SECTION, A MUTUAL DITCH OR RESERVOIR COMPANY
9 SHAREHOLDER'S INTEREST IN A PRO RATA DIVERSION OF SEVERAL WATER
10 RIGHTS DELIVERED BY A MUTUAL DITCH OR RESERVOIR COMPANY
11 THROUGH A SINGLE STRUCTURE SHALL BE CONSIDERED AS A SINGLE
12 INTEREST IN A WATER RIGHT, REGARDLESS OF HOW MANY DECREED RIGHTS
13 OR PRIORITIES OWNED BY THE MUTUAL DITCH OR RESERVOIR COMPANY
14 ARE DELIVERED USING THE STRUCTURE. SHAREHOLDERS IN MUTUAL DITCH
15 OR RESERVOIR COMPANIES SHALL BE ALLOWED TO SEVERALLY MAKE
16 APPLICATION UNDER THIS PROVISION TO TEMPORARILY CHANGE THE USE
17 OF THEIR RESPECTIVE SHARES, SUBJECT TO THE LIMITATION IN THIS
18 SUBSECTION (10).

19 (c) WHEN THE STATE ENGINEER APPROVES OR DENIES A
20 SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SUBSECTION (10), THE
21 STATE ENGINEER SHALL SERVE A COPY OF THE DECISION ON ALL PARTIES
22 TO THE APPLICATION BY FIRST-CLASS MAIL OR, IF SUCH PARTIES HAVE SO
23 ELECTED, BY ELECTRONIC MAIL. NO APPROVAL SHALL BE EFFECTIVE UNTIL
24 SIXTY DAYS AFTER THE STATE ENGINEER'S SERVICE OF THE APPROVAL ON
25 THE PARTIES. NEITHER THE APPROVAL NOR THE DENIAL BY THE STATE
26 ENGINEER SHALL CREATE ANY PRESUMPTIONS, SHIFT THE BURDEN OF
27 PROOF, OR SERVE AS A DEFENSE IN ANY LEGAL ACTION THAT MAY BE
28 INITIATED CONCERNING THE SUBSTITUTE WATER SUPPLY PLAN. ANY
29 APPEAL OF A DECISION MADE BY THE STATE ENGINEER CONCERNING A
30 SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SUBSECTION (10)
31 SHALL BE MADE TO THE WATER JUDGE IN THE APPLICABLE WATER DIVISION
32 WITHIN THIRTY DAYS. THE WATER JUDGE SHALL HEAR SUCH APPEAL ON AN
33 EXPEDITED BASIS. THE STANDARD OF REVIEW IN ANY SUCH EXPEDITED
34 HEARING SHALL BE *DE NOVO*, AND THE BURDEN SHALL BE UPON THE
35 SUBSTITUTE WATER SUPPLY PLAN APPLICANT TO DEMONSTRATE THAT THE
36 PLAN AS APPROVED DOES NOT INJURE VESTED WATER RIGHTS OR DECREED
37 CONDITIONAL WATER RIGHTS. THE WATER JUDGE SHALL HEAR THE
38 MATTER AS EFFICIENTLY AS POSSIBLE, WITH DUE REGARD FOR THE RIGHTS
39 OF THE PARTIES. AT THE CONCLUSION OF THE HEARING THE WATER JUDGE
40 SHALL EITHER APPROVE THE ACTIONS OF THE STATE ENGINEER OR REMAND
41 THE MATTER TO THE STATE ENGINEER WITH INSTRUCTIONS.

1 (d) IN ADDITION TO ALL OTHER LAWFUL USES, WATER RIGHTS FOR
2 WHICH A TEMPORARY CHANGE HAS BEEN APPROVED UNDER THIS
3 SUBSECTION (10) MAY BE USED:

4 (I) IN AN AUGMENTATION PLAN DECREED BY THE WATER COURT IF
5 THE AUGMENTATION PLAN DECREE PROVIDES A MECHANISM FOR THE
6 INCORPORATION OF SUCH SOURCES AND NO MORE THAN TEN PERCENT OF
7 SUCH SOURCES ARE AGRICULTURAL WATER; OR

8 (II) IN A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO
9 SUBSECTION (4) OF THIS SECTION IF THE SUBSTITUTE WATER SUPPLY PLAN
10 PROVIDES A MECHANISM FOR THE INCORPORATION OF SUCH SOURCES.

11 (e) THIS SUBSECTION (10) IS REPEALED, EFFECTIVE JANUARY 1,
12 2010.

13 **SECTION 3. Effective date - applicability.** This act shall take
14 effect January 1, 2005, and shall apply to water right applications filed on
15 or after said date."

16 Renumber succeeding section accordingly.

** *** ** *** **