

**First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 13-0231.01 Thomas Morris x4218

**HOUSE BILL 13-1130**

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**HOUSE SPONSORSHIP**

**Sonnenberg and Fischer,**

**SENATE SPONSORSHIP**

**Giron,**

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**House Committees**

Agriculture, Livestock, & Natural Resources

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING EXTENDED OPERATION OF INTERRUPTIBLE WATER**  
102 **SUPPLY AGREEMENTS.**

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**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>.)*

Current law allows the state engineer to approve the operation of an interruptible water supply agreement for 3 years out of a single 10-year period; once the agreement has been operated, the state engineer cannot approve the agreement for operation in any later period. The bill allows the state engineer to reapprove an agreement up to 2 additional times by

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

following the same procedures for approval of the original agreement.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-309, **amend**  
3 (3) (c), (3) (d), (4), and (5) as follows:

4 **37-92-309. Interruptible water supply agreements - special**  
5 **review procedures - rules - water adjudication cash fund - legislative**  
6 **declaration.** (3) The state engineer is authorized to approve and  
7 administer interruptible water supply agreements that permit a temporary  
8 change in the point of diversion, location of use, and type of use of an  
9 absolute water right without the need for an adjudication pursuant to this  
10 article, subject to the following:

11 (c) An interruptible water supply agreement approved pursuant to  
12 this section ~~shall not~~ CANNOT be exercised for more than three years in a  
13 ten-year period, for which only a single approval is required. The ten-year  
14 period ~~shall begin~~ BEGINS with the granting of ~~such~~ THE approval. A  
15 water right subject to the agreement under this section ~~may not~~ CANNOT  
16 use section 37-92-308 (5). THE STATE ENGINEER SHALL NOT APPROVE an  
17 interruptible water supply agreement ~~approved~~ pursuant to this subsection  
18 (3) ~~shall not be approved~~ for another ten-year period ~~except that, if such~~  
19 ~~agreement has not been exercised during the term of the agreement, an~~  
20 ~~applicant may reapply one time by repeating the application process~~  
21 ~~pursuant to this subsection (3)~~ UNLESS THE APPLICANT HAS APPLIED FOR  
22 SUBSEQUENT APPROVAL AND FOLLOWED THE PROCEDURES OF PARAGRAPH  
23 (a) OF THIS SUBSECTION (3) REGARDING NOTICE, OPPORTUNITY TO  
24 COMMENT, AND THE STATE ENGINEER'S DECISION. A PERSON MAY APPLY  
25 FOR NO MORE THAN TWO SUBSEQUENT APPROVALS.

1 (d) The applicant shall give notice by March 1 of any year that the  
2 option is to be exercised to all parties who filed comments with the state  
3 engineer pursuant to this section, unless earlier required in the agreement.  
4 ~~except that the option may be exercised at any time during 2003.~~

5 (4) (a) (I) When the state engineer approves or denies an  
6 interruptible water supply agreement OR AN APPLICATION FOR  
7 SUBSEQUENT APPROVAL, the state engineer shall serve a copy of the  
8 decision upon all parties to the application by first-class mail or, if such  
9 parties have so elected, by electronic mail. Neither the approval nor the  
10 denial of the agreement by the state engineer ~~shall create~~ CREATES any  
11 presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES as a  
12 defense in any legal action that may be initiated concerning the  
13 interruptible water supply agreement.

14 (II) (A) ~~Any~~ AN appeal of a decision made by the state engineer  
15 concerning the operation of an interruptible water supply agreement  
16 pursuant to this section shall be expedited, ~~shall be~~ IS limited to the issue  
17 of injury, and ~~shall~~ 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 expedited appeal.~~ The water judge shall hear and  
21 determine such appeal using the procedures and standards set forth in  
22 sections 37-92-304 and 37-92-305 for determination of matters rereferred  
23 to the water judge by the referee; except that the water judge shall not  
24 deem any failure to appeal all or any part of the decision of the state  
25 engineer or failure to state any grounds for appeal to preclude any party  
26 from raising any claims of injury in a future proceeding before the water  
27 judge. The proponent of the interruptible water supply agreement ~~shall be~~

1 ~~deemed to be~~ IS the applicant for purposes of application of such  
2 procedures and standards.

3 (B) ALL PARTIES TO THE APPEAL SHALL PAY TO THE WATER CLERK  
4 A FEE TO COVER THE DIRECT COSTS ASSOCIATED WITH THE EXPEDITED  
5 APPEAL. THE WATER CLERK SHALL TRANSMIT THE moneys from ~~such~~ THE  
6 fee ~~shall be transmitted~~ to the state treasurer, ~~and deposited~~ WHO SHALL  
7 DEPOSIT THEM in the water adjudication cash fund, which fund is hereby  
8 created in the state treasury. The general assembly shall appropriate  
9 moneys in the fund for the judicial department's expedited adjudications  
10 pursuant to this section.

11 (b) A party to the original application OR AN APPLICATION FOR  
12 SUBSEQUENT APPROVAL may file comments concerning potential injury  
13 to such party's water rights or decreed conditional water rights due to the  
14 operation of the interruptible water supply agreement with the state  
15 engineer by January 1 of the year following the first year that the INITIAL  
16 OR SUBSEQUENT interruptible water supply agreement has been exercised.  
17 The procedures of subsection (3) of this section regarding notice,  
18 opportunity to comment, and the state engineer's decision, and the  
19 procedures of this subsection (4) regarding an appeal of such decision,  
20 shall again be followed with regard to such party's comments.

21 (5) Applicants for approval, INCLUDING SUBSEQUENT APPROVAL,  
22 of an interruptible water supply agreement pursuant to this section shall  
23 pay a fee established by the state engineer, pursuant to rules promulgated  
24 by the state engineer. The state engineer shall collect the fees and transmit  
25 them to the state treasurer, who shall deposit them in the water resources  
26 cash fund created in section 37-80-111.7 (1).

27 **SECTION 2. Act subject to petition - effective date -**

1     **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
2     the expiration of the ninety-day period after final adjournment of the  
3     general assembly (August 7, 2013, if adjournment sine die is on May 8,  
4     2013); except that, if a referendum petition is filed pursuant to section 1  
5     (3) of article V of the state constitution against this act or an item, section,  
6     or part of this act within such period, then the act, item, section, or part  
7     will not take effect unless approved by the people at the general election  
8     to be held in November 2014 and, in such case, will take effect on the  
9     date of the official declaration of the vote thereon by the governor.

10           (2) This act applies to applications filed on or after the applicable  
11     effective date of this act.