

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0280.01 Jennifer Berman x3286

SENATE BILL 15-064

SENATE SPONSORSHIP

Sonnenberg,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture, Natural Resources, & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITS THAT THE BASIC TENETS OF COLORADO WATER**
102 **LAW PLACE ON THE ABILITY OF CERTAIN FEDERAL AGENCIES TO**
103 **IMPOSE CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE**
104 **FOR PERMISSION TO USE FEDERAL 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>.)

The bill states basic tenets of Colorado water law concerning water as a transferable property right, acknowledges that the federal government has maintained deference to state law with respect to water rights, and

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.

prohibits the United States forest service (USFS) and the federal bureau of land management (bureau) from placing conditions on special use permits for, or rights-of-way on, federal land that:

- ! Require the owner of a water right or a conditional water right to assign the USFS or the bureau partial or joint ownership of the water right;
- ! Impose limitations on the alienability of the owner's water right; or
- ! Impose restrictions that give the USFS or the bureau full or partial control over the use and operation of the water right.

The bill also prohibits the state and division engineers from cooperating with the USFS or the bureau in enforcing or administering any such conditions on special use permits for, or rights-of-way on, federal land or from expending any public funds related to the enforcement or administration of any such conditions.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-102, **add** (8),
3 (9), and (10) as follows:

4 **37-92-102. Legislative declaration - basic tenets of Colorado**
5 **water law.** (8) (a) IT IS HEREBY RECOGNIZED THAT WATER RIGHTS
6 APPROPRIATED UNDER SECTION 6 OF ARTICLE XVI OF THE STATE
7 CONSTITUTION ARE PROPERTY RIGHTS PROTECTED UNDER AMENDMENT V
8 OF THE UNITED STATES CONSTITUTION AND SECTION 15 OF ARTICLE II OF
9 THE STATE CONSTITUTION.

10 (b) IT IS FURTHER RECOGNIZED THAT:

11 (I) THE PRIMARY VALUE OF A WATER RIGHT STEMS FROM ITS
12 PRIORITY DATE AND THE AMOUNT OF WATER THAT IT ALLOWS THE OWNER
13 OF THE WATER RIGHT TO DIVERT TO BENEFICIAL USE;

14 (II) THE RIGHT TO SELL A WATER RIGHT IS AS ESSENTIAL AS THE
15 RIGHT TO POSSESS AND USE THE WATER RIGHT; AND

16 (III) A WATER RIGHT IS A PROPERTY RIGHT THAT EXISTS SEPARATE
17 AND APART FROM ANY INTEREST IN LAND.

1 (c) BASED ON THE TENETS SET FORTH IN PARAGRAPHS (a) AND (b)
2 OF THIS SUBSECTION (8), RULES, POLICIES, OR DIRECTIVES OF THE UNITED
3 STATES FOREST SERVICE OR THE FEDERAL BUREAU OF LAND MANAGEMENT
4 THAT LIMIT, PROHIBIT, OR ENCUMBER A WATER RIGHT OWNER'S ABILITY TO
5 DIVERT THE FULL AMOUNT PERMITTED UNDER THE WATER RIGHT DECREE;
6 REDUCE THE YIELD AVAILABLE TO A WATER RIGHT OWNER; OR INTERFERE
7 WITH THE ALIENABILITY OF A WATER RIGHT DEPRIVE THE WATER RIGHT
8 OWNER OF THE FULL PROPERTY RIGHTS ASSOCIATED WITH THE WATER
9 RIGHT IN THAT THEY:

10 (I) DEPRIVE THE OWNER OF ALL ECONOMIC VALUE ASSOCIATED
11 WITH THE PORTION OF THE WATER RIGHT THAT CAN NO LONGER BE PUT TO
12 BENEFICIAL USE;

13 (II) ARE SO BURDENSOME AS TO HINDER THE PROPERTY INTEREST
14 TO THE SAME EXTENT AS A PHYSICAL APPROPRIATION OF THE PROPERTY;
15 AND

16 (III) ARE PER SE UNREASONABLE.

17 (d) THE TENET SET FORTH IN PARAGRAPH (c) OF THIS SUBSECTION
18 (8) DOES NOT APPLY TO RULES, POLICIES, OR DIRECTIVES IMPLEMENTED
19 PURSUANT TO THE STATE ENGINEER'S OR A DIVISION ENGINEER'S
20 EXCLUSIVE AUTHORITY TO ADMINISTER, DISTRIBUTE, AND REGULATE
21 WATER RIGHTS IN ACCORDANCE WITH SECTION 37-92-501 (1) OR OTHER
22 RULES, POLICIES, OR DIRECTIVES AUTHORIZED ELSEWHERE IN THE
23 COLORADO REVISED STATUTES.

24 (9) (a) THE HISTORY BETWEEN THE FEDERAL GOVERNMENT AND
25 THE STATES IN THE RECLAMATION OF THE ARID LANDS OF THE WESTERN
26 STATES IS BOTH LONG AND INVOLVED. THROUGHOUT THAT HISTORY,
27 CONGRESS HAS MAINTAINED A PURPOSEFUL AND CONTINUED DEFERENCE

1 TO STATE WATER LAW.

2 (b) THE GENERAL ASSEMBLY RECOGNIZES THAT WHEN THE
3 FEDERAL GOVERNMENT WITHDRAWS ITS LAND FROM THE PUBLIC DOMAIN
4 AND RESERVES IT FOR A FEDERAL PURPOSE, THE FEDERAL GOVERNMENT,
5 BY IMPLICATION, ALSO RESERVES APPURTENANT, UNAPPROPRIATED
6 WATER, BUT ONLY TO THE EXTENT NEEDED TO ACCOMPLISH THE PRIMARY
7 PURPOSE OF THE RESERVATION.

8 (c) IF THE FEDERAL GOVERNMENT DESIRES ADDITIONAL WATER
9 FOR A SECONDARY PURPOSE OF THE RESERVATION, THE FEDERAL
10 GOVERNMENT MUST ACQUIRE THE ADDITIONAL WATER IN THE SAME
11 MANNER AS ANY OTHER PUBLIC OR PRIVATE APPROPRIATOR IN
12 ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO.

13 (d) IT IS FURTHER RECOGNIZED THAT THE STATE OF COLORADO
14 DOES NOT ACKNOWLEDGE ANY PREFERENCE OR HIERARCHY AMONG
15 DIFFERENT BENEFICIAL USES EXCEPT AS STATED IN SECTION 6 OF ARTICLE
16 XVI OF THE STATE CONSTITUTION.

17 (10) (a) AS A CONDITION OF GRANTING A RIGHT-OF-WAY OR
18 SPECIAL USE PERMIT, NEITHER THE UNITED STATES FOREST SERVICE NOR
19 THE FEDERAL BUREAU OF LAND MANAGEMENT SHALL:

20 (I) DEMAND THAT THE OWNER OF A WATER RIGHT OR
21 CONDITIONAL WATER RIGHT ASSIGN TO THE UNITED STATES FOREST
22 SERVICE OR THE FEDERAL BUREAU OF LAND MANAGEMENT FULL, PARTIAL,
23 OR JOINT OWNERSHIP OF THE WATER RIGHT;

24 (II) IMPOSE LIMITATIONS ON A WATER RIGHT THAT RESTRICT THE
25 WATER RIGHT OWNER'S ABILITY TO RECEIVE FAIR MARKET VALUE FOR THE
26 WATER RIGHT; OR

27

1 (III) IMPOSE RESTRICTIONS THAT GIVE THE UNITED STATES FOREST
2 SERVICE OR THE FEDERAL BUREAU OF LAND MANAGEMENT FULL OR
3 PARTIAL CONTROL OVER THE USE AND OPERATION OF A WATER RIGHT.

4 (b) EACH OF THE CONDITIONS SET FORTH IN PARAGRAPH (a) OF
5 THIS SUBSECTION (10) ARE VOID AND UNENFORCEABLE AS AGAINST PUBLIC
6 POLICY.

7 (c) THE STATE AND DIVISION ENGINEERS SHALL NOT COOPERATE
8 WITH THE UNITED STATES FOREST SERVICE OR THE FEDERAL BUREAU OF
9 LAND MANAGEMENT IN ENFORCING OR ADMINISTERING A RULE, POLICY, OR
10 DIRECTIVE THAT APPLIES ANY OF THE CONDITIONS SET FORTH IN
11 PARAGRAPH (a) OF THIS SUBSECTION (10), NOR SHALL THE STATE AND
12 DIVISION ENGINEERS EXPEND ANY PUBLIC FUNDS RELATED TO THE
13 ENFORCEMENT OR ADMINISTRATION OF ANY SUCH RULE, POLICY, OR
14 DIRECTIVE.

15 (d) NOTHING IN THIS SUBSECTION (10) OR IN SUBSECTION (8) OR (9)
16 OF THIS SECTION GRANTS, EXPANDS, OR CONTRACTS ANY LEGAL
17 AUTHORITY THE UNITED STATES FOREST SERVICE OR THE FEDERAL
18 BUREAU OF LAND MANAGEMENT MIGHT HAVE TO IMPOSE BYPASS FLOW
19 REQUIREMENTS IN CONNECTION WITH A SPECIAL USE PERMIT OR OTHER
20 AUTHORIZATION.

21 (e) **Severability.** IF ANY PROVISION OF THIS SUBSECTION (10) OR
22 SUBSECTION (8) OR (9) OF THIS SECTION OR THE APPLICATION THEREOF TO
23 ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY DOES
24 NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT
25 CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION,
26 AND TO THIS END, THE PROVISIONS OF THIS SUBSECTION (10) AND
27 SUBSECTIONS (8) AND (9) OF THIS SECTION ARE SEVERABLE.

1 **SECTION 2. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly (August
4 5, 2015, if adjournment sine die is on May 6, 2015); except that, if a
5 referendum petition is filed pursuant to section 1 (3) of article V of the
6 state constitution against this act or an item, section, or part of this act
7 within such period, then the act, item, section, or part will not take effect
8 unless approved by the people at the general election to be held in
9 November 2016 and, in such case, will take effect on the date of the
10 official declaration of the vote thereon by the governor.