

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0231.01 Thomas Morris x4218

HOUSE BILL 13-1130

HOUSE SPONSORSHIP

Sonnenberg and Fischer,

SENATE SPONSORSHIP

Giron,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

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

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.

HOUSE
3rd Reading Unamended
February 26, 2013

HOUSE
Amended 2nd Reading
February 22, 2013

following the same procedures for approval of the original agreement.

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 (2) and (3) (c); and **add** (6) as follows:

4 **37-92-309. Interruptible water supply agreements - special**
5 **review procedures - rules - water adjudication cash fund - legislative**
6 **declaration.** (2) For purposes of this section:

7 (a) "Interruptible water supply agreement" means an option
8 agreement between two or more water right owners whereby:

9 (a) (I) The ~~loaning~~ OWNER OF THE LOANED water right ~~owner~~
10 agrees that, during the term of ~~such~~ THE agreement, it will stop its use of
11 the loaned water right for a specified length of time if the option is
12 exercised by the borrowing water right owner in accordance with the
13 agreement; and

14 (b) (II) The borrowing water right owner may divert the loaned
15 water right for such owner's purposes, subject to the priority system and
16 subject to temporary approval by the state engineer in accordance with
17 this section.

18 (b) "LOANED WATER RIGHT" MEANS ANY IDENTIFIED WATER
19 RIGHT, OR IDENTIFIED PORTION OF A WATER RIGHT, SPECIFICALLY
20 DESCRIBED IN THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

21 (3) The state engineer is authorized to approve and administer
22 interruptible water supply agreements that permit a temporary change in
23 the point of diversion, location of use, and type of use of an absolute
24 water right without the need for an adjudication pursuant to this article,
25 subject to the following:

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

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

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

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

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

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

22 (c) AN APPLICANT FOR SUBSEQUENT APPROVAL OF AN
23 INTERRUPTIBLE WATER SUPPLY AGREEMENT MUST:

24 (I) SUBMIT TO THE WATER CLERK IN EACH WATER DIVISION IN
25 WHICH A LOANED WATER RIGHT IS LOCATED A RESUME OF THE
26 APPLICATION FOR APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY
27 AGREEMENT SUBMITTED TO THE STATE ENGINEER, AND THE WATER CLERK

1 SHALL PUBLISH THE RESUMES IN THE MANNER SET FORTH IN SECTION
2 37-92-302 (3) (a) AND (3) (b), NOTWITHSTANDING THE FACT THAT THE
3 APPLICATIONS WERE FILED WITH THE STATE ENGINEER;

4 (II) FILE PROOF OF THE SUBMISSION OF THE RESUME TO THE WATER
5 CLERK WITH THE STATE ENGINEER NOT LATER THAN TEN DAYS AFTER THE
6 SUBMISSION; AND

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

11 (d) OWNERS OF WATER RIGHTS HAVE UNTIL THE LAST DAY OF THE
12 FOURTH MONTH FOLLOWING THE MONTH IN WHICH THE RESUME WAS
13 SUBMITTED TO THE WATER CLERK TO FILE COMMENTS ON THE OPERATION
14 OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT.

15 (e) THE STATE ENGINEER MAY APPROVE A SUBSEQUENT
16 APPLICATION FOR INTERRUPTIBLE WATER SUPPLY AGREEMENT UNDER THIS
17 SUBSECTION (6) ONLY;

18 (I) AFTER MAKING A DETERMINATION OF THE OPERATION AND
19 ADMINISTRATION OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT TO
20 ASSURE THAT SUCH OPERATION AND ADMINISTRATION WILL NOT PERMIT
21 A BORROWING WATER RIGHT USER TO RELY ON THE EXERCISE OF MULTIPLE
22 INTERRUPTIBLE WATER SUPPLY AGREEMENTS AS ITS PRIMARY SOURCE OF
23 SUPPLY;

24 (II) IF THE TERMS AND CONDITIONS IMPOSED PURSUANT TO
25 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION ARE NO LESS
26 RESTRICTIVE THAN THOSE IMPOSED UPON PREVIOUSLY APPROVED
27 APPLICATIONS;

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

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

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

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

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

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 7, 2013, if adjournment sine die is on May 8,
26 2013); except that, if a referendum petition is filed pursuant to section 1
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2014 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

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