

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 16-0560.01 Jennifer Berman x3286

HOUSE BILL 16-1228

HOUSE SPONSORSHIP

Arndt and Becker J.,

SENATE SPONSORSHIP

Donovan and Sonnenberg,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

Agriculture, Natural Resources, & Energy

A BILL FOR AN ACT

101 **CONCERNING AN ALTERNATIVE TRANSFER MECHANISM FOR WATER**
102 **RIGHTS THAT PROTECTS THE AGRICULTURAL USE FOR WHICH A**
103 **WATER RIGHT WAS ORIGINALLY DECREED WHILE PERMITTING**
104 **RENEWABLE ONE-YEAR TRANSFERS OF A PORTION OF THE**
105 **WATER SUBJECT TO THE WATER RIGHT.**

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>.)

Currently, water court proceedings governing an application to change the beneficial use of an agricultural water right require the

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
March 22, 2016

HOUSE
Amended 2nd Reading
March 21, 2016

applicant to designate a specific beneficial use identified at the time of the application. The bill authorizes an owner of an agricultural water right to seek a change-in-use decree in water court to allow the transfer of up to 50% of the water subject to the water right to any beneficial use for renewable one-year periods, without designating the specific beneficial use, if the owner has obtained substitute water supply plan approval and the following conditions are met:

- ! In accordance with rules established by the state engineer, the state engineer must approve a one-year lease, loan, or exchange transferring a portion of the water subject to the water right;
- ! The owner of the water right may transfer up to 50% of the historical consumptive use portion of the water right;
- ! The remaining portion of the water subject to the water right must continue to be used for agricultural purposes;
- ! The water right must be protected by the owner's participation in a conservation program or water banking program or establishment of a conservation easement;
- ! Ownership must remain with the owner who applied for the change-in-use decree;
- ! The owner shall not transfer water subject to the water right outside of the water division with jurisdiction over the location of historical consumptive use; and
- ! The transferable portion of the water subject to the water right must be delivered to a point of diversion that is subject to an existing water court decree.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-60-133 as
3 follows:

4 **37-60-133. Minimum criteria and guidelines for agricultural**
5 **water protection programs.** (1) (a) THE BOARD SHALL DEVELOP
6 MINIMUM CRITERIA AND GUIDELINES FOR THE ESTABLISHMENT OF AN
7 AGRICULTURAL WATER PROTECTION PROGRAM IN WATER DIVISION 1 OR 2
8 PURSUANT TO SECTION 37-92-305 (19) (b) (IV) (B) TO ASSURE SUFFICIENT
9 PROTECTION AND MONITORING OF AGRICULTURAL WATER PROTECTION
10 WATER RIGHTS PURSUANT TO SECTION 37-92-305 (19) (b) (III).

1 (b) THE BOARD MAY PROMULGATE SEPARATE MINIMUM CRITERIA
2 AND GUIDELINES FOR EACH WATER DIVISION.

3 (c) (I) UNTIL FINALIZATION OF THE CRITERIA AND GUIDELINES, THE
4 BOARD SHALL POST AND PERIODICALLY UPDATE DRAFT CRITERIA AND
5 GUIDELINES ON ITS WEBSITE.

6 (II) THE BOARD SHALL CONSIDER ANY COMMENTS IT RECEIVES ON
7 THE DRAFT CRITERIA AND GUIDELINES AND, UPON THE REQUEST OF AN
8 ELIGIBLE ENTITY, AS DEFINED IN SECTION 37-92-305 (19) (c), THE BOARD
9 SHALL HOLD A MEETING WITH THE ELIGIBLE ENTITY TO RECEIVE THE
10 ELIGIBLE ENTITY'S COMMENTS.

11 (III) THE BOARD SHALL HOLD AT LEAST ONE PUBLIC MEETING IN
12 EACH WATER DIVISION TO PRESENT THE DRAFT CRITERIA AND GUIDELINES
13 AND RECEIVE COMMENTS ON THEM.

14 (2) THE BOARD SHALL FINALIZE THE CRITERIA AND GUIDELINES
15 WITHIN ONE YEAR AFTER INITIATING THE PROCESS TO DEVELOP CRITERIA
16 AND GUIDELINES.

17 (3) AS USED IN THIS SECTION, "AGRICULTURAL WATER PROTECTION
18 WATER RIGHT" HAS THE SAME MEANING AS IN SECTION 37-92-305 (19) (a).

19 **SECTION 2.** In Colorado Revised Statutes, **add** 37-80-123 as
20 follows:

21 **37-80-123. Lease, loan, or trade of agricultural water**
22 **protection water right - rules - definition.** (1) (a) AS SOON AS
23 PRACTICABLE, THE STATE ENGINEER SHALL INITIATE THE PROMULGATION
24 OF RULES GOVERNING THE REVIEW OF A SUBSTITUTE WATER SUPPLY PLAN
25 PURSUANT TO SECTION 37-92-308 (12). IN PROMULGATING THE RULES, THE
26 STATE ENGINEER SHALL FOLLOW THE STATE ENGINEER'S OWN
27 RULE-MAKING PROCEDURES.

1 (b) THE RULES MUST INCLUDE:
2 (I) TERMS AND CONDITIONS THAT THE STATE ENGINEER MAY
3 IMPOSE THROUGH AN APPROVED SUBSTITUTE WATER SUPPLY PLAN
4 PURSUANT TO SECTION 37-92-308 (12);
5 (II) CRITERIA THAT THE STATE ENGINEER SHOULD CONSIDER IN
6 REVIEWING A SUBSTITUTE WATER SUPPLY PLAN APPLICATION FILED
7 PURSUANT TO SECTION 37-92-308 (12);
8 (III) CRITERIA TO ENSURE THAT SUBSTITUTE WATER SUPPLY PLANS
9 APPROVED PURSUANT TO 37-92-308 (12) DO NOT FACILITATE THE
10 DIVERSION OF WATER BETWEEN WATER DIVISIONS BY DIRECT DIVERSION,
11 EXCHANGE, REPLACEMENT, OR OTHER MEANS;
12 (IV) PROCEDURES BY WHICH THE STATE ENGINEER MAY
13 RECONSIDER A DECISION; AND
14 (V) PROCEDURES FOR CREATING A DATABASE THAT TRACKS AND
15 INVENTORIES SUBSTITUTE WATER SUPPLY PLANS APPROVED UNDER
16 SECTION 37-92-308 (12) AND FOR MAKING THE FOLLOWING INFORMATION
17 FROM THE DATABASE ACCESSIBLE TO THE PUBLIC:
18 (A) THE AMOUNT OF WATER SUBJECT TO EACH APPROVED PLAN;
19 (B) THE LOCATION OF USE OF WATER UNDER EACH APPROVED
20 PLAN; AND
21 (C) THE DECREED BENEFICIAL USE OF WATER LEASED, LOANED, OR
22 TRADED IN CONNECTION WITH EACH APPROVED PLAN.
23 (c) THE WATER JUDGE FOR WATER DIVISION 1 SHALL REVIEW THE
24 RULES PROMULGATED UNDER THIS SECTION IN ACCORDANCE WITH THE
25 PROCEDURES SET FORTH IN SECTIONS 37-92-501 (2) (g), (3) (a), AND (3)
26 (b).
27 (2) AS USED IN THIS SECTION, "AGRICULTURAL WATER PROTECTION

1 WATER RIGHT" HAS THE SAME MEANING AS IN SECTION 37-92-305 (19) (a).

2 SECTION 3. In Colorado Revised Statutes, 37-92-305, add (4)
3 (c) and (19) as follows:

4 37-92-305. Standards with respect to rulings of the referee and
5 decisions of the water judge - definitions. (4) (c) WITH RESPECT TO A
6 CHANGE-IN-USE APPLICATION THAT SEEKS APPROVAL TO CHANGE AN
7 ABSOLUTE DECREED IRRIGATION WATER RIGHT USED FOR AGRICULTURAL
8 PURPOSES TO AN AGRICULTURAL WATER PROTECTION WATER RIGHT, AS
9 DESCRIBED IN SUBSECTION (19) OF THIS SECTION, THE DECREE MUST:

10 (I) QUANTIFY THE HISTORICAL DIVERSIONS AND HISTORICAL
11 CONSUMPTIVE USE OF THE ABSOLUTE DECREED IRRIGATION WATER RIGHT
12 USED FOR AGRICULTURAL PURPOSES PURSUANT TO SUBSECTION (3) OF THIS
13 SECTION;

14 (II) QUANTIFY THE RETURN FLOWS ASSOCIATED WITH THE
15 HISTORICAL USE OF THE WATER RIGHT IN TIME, PLACE, AND AMOUNT;

16 (III) PROVIDE TERMS AND CONDITIONS, PURSUANT TO PARAGRAPH
17 (a) OF THIS SUBSECTION (4), FOR A CHANGE IN THE USE OF THE
18 AGRICULTURAL WATER PROTECTION WATER RIGHT PURSUANT TO A
19 SUBSTITUTE WATER SUPPLY PLAN, APPROVED IN ACCORDANCE WITH
20 SECTIONS 37-92-308 (12) AND 37-80-123, INCLUDING THE RETURN FLOW
21 OBLIGATIONS IN TIME, PLACE, AND AMOUNT THAT PREVENT MATERIAL
22 INJURY TO OTHER VESTED WATER RIGHTS AND DECREED CONDITIONAL
23 WATER RIGHTS;

24 (IV) IN ACCORDANCE WITH SUBPARAGRAPH (II) OF PARAGRAPH (b)
25 OF SUBSECTION (19) OF THIS SECTION, ALLOW AN AMOUNT OF THE
26 QUANTIFIED HISTORICAL CONSUMPTIVE PORTION OF WATER SUBJECT TO
27 THE CHANGED AGRICULTURAL WATER PROTECTION WATER RIGHT TO BE

1 DELIVERED TO A POINT OF DIVERSION WITHIN THE WATER DIVISION OF
2 HISTORICAL USE WITHOUT DESIGNATING THE BENEFICIAL USE TO WHICH
3 THE WATER WILL BE APPLIED. DELIVERY MUST BE TO A POINT OF
4 DIVERSION THAT IS APPROVED BY THE STATE ENGINEER IN
5 ACCORDANCE WITH CONDITIONS:

6 (A) SET FORTH IN SECTION 37-92-308 (12); AND

7 (B) DEVELOPED BY THE STATE ENGINEER PURSUANT TO SECTION
8 37-80-123; AND

9 (V) FOR A PERIOD THAT THE WATER JUDGE DEEMS NECESSARY AND
10 DESIRABLE TO REMEDY OR PRECLUDE INJURY AND PURSUANT TO SECTION
11 37-92-304 (6), BE SUBJECT TO RETAINED JURISDICTION BY THE WATER
12 JUDGE ON THE QUESTION OF INJURY TO OTHER VESTED WATER RIGHTS.

13 (19) **Agricultural water protection - definitions.** (a) (I) AFTER
14 THE STATE ENGINEER'S PROPOSED RULES PROMULGATED UNDER SECTION
15 37-80-123 ARE REVIEWED AND FINALIZED PURSUANT TO SECTION
16 37-80-123 (1) (c) AND AFTER THE COLORADO WATER CONSERVATION
17 BOARD HAS FINALIZED THE CRITERIA AND GUIDELINES DEVELOPED
18 PURSUANT TO SECTION 37-60-133, THE OWNER OF AN ABSOLUTE DECREED
19 IRRIGATION WATER RIGHT IN WATER DIVISION 1 OR 2 USED FOR
20 AGRICULTURAL PURPOSES MAY APPLY IN WATER COURT TO CHANGE THE
21 USE OF THE WATER RIGHT TO AN AGRICULTURAL WATER PROTECTION
22 WATER RIGHT. A WATER RIGHT DECREED IN WATER DIVISION 3, 4, 5, 6, OR
23 7 IS NOT ELIGIBLE FOR A CHANGE IN WATER RIGHT TO AN AGRICULTURAL
24 WATER PROTECTION WATER RIGHT. AS USED IN THIS SECTION, AN
25 "AGRICULTURAL WATER PROTECTION WATER RIGHT" MEANS A WATER
26 RIGHT DECREED TO ALLOW THE LEASE, LOAN, OR TRADE OF UP TO FIFTY
27 PERCENT OF THE WATER SUBJECT TO THE WATER RIGHT.

1 (II) AFTER A PERSON HAS OBTAINED A DECREED AGRICULTURAL
2 WATER PROTECTION WATER RIGHT, THE PERSON MAY APPLY FOR
3 SUBSTITUTE WATER SUPPLY PLAN APPROVAL PURSUANT TO SECTION
4 37-92-308 (12).

5 (b) IF THE OWNER OF A DECREED AGRICULTURAL WATER
6 PROTECTION WATER RIGHT OBTAINS A SUBSTITUTE WATER SUPPLY PLAN
7 PURSUANT TO SECTION 37-92-308 (12), THE AGRICULTURAL WATER
8 PROTECTION WATER RIGHT IS SUBJECT TO THE FOLLOWING CONDITIONS:

9 (I) THE OWNER OF A DECREED AGRICULTURAL WATER PROTECTION
10 WATER RIGHT MUST COMPLY WITH THE TERMS OF THE DECREE GOVERNING
11 THE POINT OF DIVERSION WHERE THE LEASED, LOANED, OR TRADED
12 WATER IS BEING DELIVERED;

13 (II) THE OWNER MAY LEASE, LOAN, OR TRADE UP TO FIFTY
14 PERCENT OF THE QUANTIFIED HISTORICAL CONSUMPTIVE USE PORTION OF
15 THE AGRICULTURAL WATER PROTECTION WATER RIGHT;

16 (III) ANY AMOUNT OF WATER NOT BEING LEASED, LOANED, OR
17 TRADED MUST CONTINUE TO BE USED FOR AGRICULTURAL PURPOSES:

18 (A) ON THE PROPERTY HISTORICALLY DECREED TO BE SERVED BY
19 THE ORIGINAL ABSOLUTE DECREED IRRIGATION WATER RIGHT; OR

20 (B) FOR AS LONG AS THE OTHER PORTION OF WATER IS BEING
21 LEASED, LOANED, OR EXCHANGED, ON ANOTHER PROPERTY SERVED BY
22 THE SAME DITCH SYSTEM;

23 (IV) THE OWNER OF THE AGRICULTURAL WATER PROTECTION
24 WATER RIGHT IS REQUIRED TO PARTICIPATE IN ONE OR MORE OF THE
25 FOLLOWING PROGRAMS:

26 (A) AS ESTABLISHED BY THE FEDERAL GOVERNMENT, THE STATE,
27 A SUBDIVISION OF THE STATE, OR A NONPROFIT ORGANIZATION,

1 CONSERVATION PROGRAMS THAT CONSERVE THE LAND HISTORICALLY
2 SERVED BY THE IRRIGATION WATER RIGHT, WHICH PROGRAMS INCLUDE
3 COLORADO'S CONSERVATION EASEMENT PROGRAM ESTABLISHED IN
4 ARTICLE 30.5 OF TITLE 38, C.R.S., THE UNITED STATES FISH AND WILDLIFE
5 SERVICE EASEMENT PROGRAM, THE NATURAL RESOURCES CONSERVATION
6 SERVICES EASEMENT PROGRAM, THE COLORADO DIVISION OF PARKS AND
7 WILDLIFE EASEMENT PROGRAM, AND A COUNTY OPEN SPACE EASEMENT
8 PROGRAM; OR

9 (B) AN AGRICULTURAL WATER PROTECTION PROGRAM DESIGNED
10 TO ASSURE COMPLIANCE WITH THE TERMS OF SUBPARAGRAPH (III) OF THIS
11 PARAGRAPH (b). THE PROGRAM MUST BE SPONSORED AND OPERATED BY
12 AN ELIGIBLE ENTITY THROUGH A FORMAL ACTION OR ORDINANCE AND IN
13 COMPLIANCE WITH MINIMUM CRITERIA AND GUIDELINES ESTABLISHED BY
14 THE COLORADO WATER CONSERVATION BOARD PURSUANT TO SECTION
15 37-60-133. AN ELIGIBLE ENTITY MAY ENROLL AGRICULTURAL WATER
16 PROTECTION WATER RIGHTS ONLY FROM A WATER RIGHT HISTORICALLY
17 DECREED WITHIN THE ENTITY'S GEOGRAPHIC BOUNDARY.

18 (V) IF THE OWNER'S PARTICIPATION IN A CONSERVATION PROGRAM
19 PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (b) CEASES, THE
20 OWNER'S ELIGIBILITY TO TRANSFER WATER SUBJECT TO THE
21 AGRICULTURAL WATER PROTECTION WATER RIGHT BY LEASE, LOAN, OR
22 TRADE OR TO OBTAIN A SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO
23 SECTION 37-92-308 (12) IS SUSPENDED, AND THE WATER MUST BE USED
24 ONLY FOR AGRICULTURAL IRRIGATION PURPOSES ON THE PROPERTY
25 HISTORICALLY DECREED TO BE SERVED BY THE ORIGINAL ABSOLUTE
26 DECREED IRRIGATION WATER RIGHT UNTIL THE OWNER PARTICIPATES IN
27 ONE OF THE CONSERVATION PROGRAMS AGAIN; AND

1 (VI) THE OWNER SHALL NOT LEASE, LOAN, OR TRADE WATER
2 SUBJECT TO THE AGRICULTURAL WATER PROTECTION WATER RIGHT
3 OUTSIDE OF THE WATER DIVISION WHERE THE HISTORICAL CONSUMPTIVE
4 USE WAS LOCATED.

5 (c) AS USED IN THIS SUBSECTION (19), AN "ELIGIBLE ENTITY"
6 MEANS AN ENTITY IN WATER DIVISION 1 OR 2 THAT:

7 (I) HAS GEOGRAPHIC BOUNDARIES THAT ARE LOCATED ENTIRELY
8 WITHIN THE WATER DIVISION OF THE WATER RIGHT'S HISTORICAL PLACE OF
9 USE AND ARE DEFINED IN AN ORIGINAL OR AMENDED DOCUMENT
10 GOVERNING THE ENTITY; AND

11 (II) IS A WATER CONSERVATION DISTRICT, WATER CONSERVANCY
12 DISTRICT, IRRIGATION DISTRICT, DITCH OR RESERVOIR COMPANY,
13 NONPROFIT WATER PROVIDER, OR A MUNICIPALITY.

14 **SECTION 4.** In Colorado Revised Statutes, 37-92-308, **add** (12)
15 as follows:

16 **37-92-308. Substitute water supply plans - special procedures**
17 **for review - water adjudication cash fund - legislative declaration -**
18 **repeal. (12) Agricultural water protection. (a) AFTER A PERSON HAS**
19 **OBTAINED A DECREED AGRICULTURAL WATER PROTECTION WATER RIGHT**
20 **PURSUANT TO SECTION 37-92-305 (19), WHICH WATER RIGHT IS AVAILABLE**
21 **ONLY IN WATER DIVISION 1 OR 2, THE PERSON MAY APPLY FOR A**
22 **SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS SUBSECTION (12).**

23 (b) (I) THE STATE ENGINEER MAY APPROVE THE LEASE, LOAN, OR
24 TRADE OF WATER UNDER A SUBSTITUTE WATER SUPPLY PLAN PURSUANT
25 TO THIS SUBSECTION (12) IF THE APPLICANT HAS:

26 (A) PROVIDED WRITTEN NOTICE OF THE REQUEST FOR APPROVAL
27 OF THE SUBSTITUTE WATER SUPPLY PLAN BY ELECTRONIC MAIL OR

1 FIRST-CLASS MAIL TO ALL PARTIES WHO HAVE SUBSCRIBED TO THE
2 SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST FOR THE WATER
3 DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED; AND

4 (B) FILED PROOF OF THE NOTICE WITH THE STATE ENGINEER.

5 (II) A PERSON WHO RECEIVES WRITTEN NOTICE OF THE REQUEST
6 FOR APPROVAL OF A SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO
7 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) HAS THIRTY-FIVE DAYS AFTER
8 THE DATE THAT THE NOTICE WAS MAILED TO FILE COMMENTS WITH THE
9 STATE ENGINEER ON THE SUBSTITUTE WATER SUPPLY PLAN APPLICATION.

10 A PARTY FILING A COMMENT WITH THE STATE ENGINEER MUST INCLUDE
11 THE FOLLOWING IN THE COMMENT:

12 (A) ANY CLAIM OF INJURY;

13 (B) ANY TERMS AND CONDITIONS THAT THE PARTY BELIEVES
14 SHOULD BE IMPOSED ON THE PLAN TO PREVENT INJURY TO A PARTY'S
15 WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS; AND

16 (C) ANY OTHER INFORMATION THE PARTY WISHES THE STATE
17 ENGINEER TO CONSIDER IN REVIEWING THE SUBSTITUTE WATER SUPPLY
18 PLAN REQUEST.

19 (c) IF, AFTER CONSIDERATION OF THE APPLICATION AND ANY
20 COMMENTS RECEIVED ON THE APPLICATION, THE STATE ENGINEER
21 APPROVES A SUBSTITUTE WATER SUPPLY PLAN PURSUANT TO THIS
22 SUBSECTION (12), THE APPROVAL MUST:

23 (I) COMPLY WITH CONDITIONS:

24 (A) SET FORTH IN SECTION 37-92-305 (19); AND

25 (B) DEVELOPED BY THE STATE ENGINEER PURSUANT TO SECTION
26 37-80-123;

27 (II) COMPLY WITH THE TERMS AND CONDITIONS OF THE

1 APPLICANT'S DECREED AGRICULTURAL WATER PROTECTION WATER RIGHT,
2 AS RECOGNIZED BY THE CASE NUMBER OF THE DECREE;

3 (III) IDENTIFY THE ASSOCIATED WATER RIGHT AS AN
4 AGRICULTURAL WATER PROTECTION WATER RIGHT;

5 (IV) QUANTIFY THE PORTION OF THE HISTORICAL CONSUMPTIVE
6 USE OF THE WATER RIGHT TO BE LEASED, LOANED, OR TRADED;

7 (V) QUANTIFY THE PORTION OF THE RETURN FLOWS ASSOCIATED
8 WITH THE HISTORICAL USE OF THE WATER TO BE LEASED, LOANED, OR
9 TRADED IN TIME, PLACE, AND AMOUNT;

10 (VI) PROVIDE TERMS AND CONDITIONS FOR THE USE OF THE WATER
11 RIGHT, INCLUDING THE RETURN FLOW OBLIGATIONS IN TIME, PLACE, AND
12 AMOUNT, THAT PREVENT MATERIAL INJURY TO OTHER VESTED WATER
13 RIGHTS AND DECREED CONDITIONAL WATER RIGHTS; AND

14 (VII) IN ACCORDANCE WITH SECTION 37-92-305 (19) (b) (I),
15 ALLOW DELIVERY OF AN AMOUNT OF THE QUANTIFIED HISTORICAL
16 CONSUMPTIVE PORTION OF THE AGRICULTURAL WATER PROTECTION
17 WATER RIGHT. DELIVERY MUST BE TO A POINT OF DIVERSION THAT IS
18 SUBJECT TO AN EXISTING WATER COURT DECREE.

19 (d) A SUBSTITUTE WATER SUPPLY PLAN APPROVED PURSUANT TO
20 THIS SUBSECTION (12) IS VALID FOR ONE YEAR. IF THE TERMS AND
21 CONDITIONS OF THE PLAN REMAIN UNCHANGED, THE HOLDER OF THE PLAN
22 MAY RENEW THE PLAN TWO TIMES WITHOUT REAPPLYING BY NOTIFYING
23 THE STATE ENGINEER BY ELECTRONIC MAIL OR FIRST-CLASS MAIL THAT
24 THE TERMS AND CONDITIONS REMAIN UNCHANGED. TO MAINTAIN THE
25 SUBSTITUTE WATER SUPPLY PLAN, THE HOLDER OF THE PLAN MUST FILE A
26 NEW APPLICATION EVERY THREE YEARS. ANY CHANGE IN THE TERMS AND
27 CONDITIONS IMMEDIATELY NULLIFIES THE SUBSTITUTE WATER SUPPLY

1 PLAN, AND A NEW APPLICATION MUST BE APPLIED FOR AND APPROVED BY
2 THE STATE ENGINEER PURSUANT TO THIS SUBSECTION (12).

3 (e) WHEN THE STATE ENGINEER APPROVES OR DENIES A
4 SUBSTITUTE WATER SUPPLY PLAN, THE STATE ENGINEER SHALL SERVE A
5 COPY OF THE DECISION ON ALL PARTIES TO THE APPLICATION AND THE
6 WATER COURT APPLICATION BY FIRST-CLASS MAIL OR, IF A PARTY HAS SO
7 ELECTED, BY ELECTRONIC MAIL.

8 (f) THE STATE ENGINEER MUST PROVIDE A DETAILED STATEMENT
9 OF THE BASIS AND RATIONALE FOR THE DECISION. FOR A DECISION
10 APPROVING THE APPLICATION, THE STATEMENT OF THE BASIS AND
11 RATIONALE MUST INCLUDE A COMPLETE EXPLANATION OF THE TERMS AND
12 CONDITIONS IMPOSED TO PREVENT INJURY TO OTHER WATER RIGHTS AND
13 WHY THEY ARE IMPOSED. THE DECISION MUST INCLUDE A DESCRIPTION OF
14 THE CONSIDERATION GIVEN TO ANY WRITTEN COMMENTS THAT WERE
15 FILED BY OTHER PARTIES.

16 (g) NEITHER THE STATE ENGINEER'S APPROVAL NOR DENIAL OF AN
17 APPLICATION CREATES ANY PRESUMPTIONS, SHIFTS THE BURDEN OF PROOF,
18 OR SERVES AS A DEFENSE IN ANY LEGAL ACTION THAT MAY BE INITIATED
19 CONCERNING THE SUBSTITUTE WATER SUPPLY PLAN.

20 (h) ANY APPEAL OF A DECISION MADE BY THE STATE ENGINEER
21 CONCERNING A SUBSTITUTE WATER SUPPLY PLAN APPROVED OR DENIED
22 PURSUANT TO THIS SUBSECTION (12) MUST BE MADE WITHIN THIRTY-FIVE
23 DAYS AFTER THE DATE OF SERVICE OF THE DECISION. ANY APPEAL MUST
24 BE FILED UNDER THE SAME CASE NUMBER AS THE DECREED AGRICULTURAL
25 WATER PROTECTION WATER RIGHT AND SHALL BE HEARD USING THE
26 PROCEDURES AND STANDARDS SET FORTH IN SECTIONS 37-92-304 AND
27 37-92-305 FOR DETERMINATION OF THE MATTERS REFERRED TO THE

1 WATER JUDGE BY THE REFEREE. THE WATER JUDGE SHALL HEAR AND
2 DETERMINE ANY APPEAL ON AN EXPEDITED BASIS.

3 **SECTION 5. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2016 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.