

CHAPTER 335

WATER AND IRRIGATION

HOUSE BILL 04-1256

BY REPRESENTATIVE(S) Hodge, Brophy, Harvey, Hoppe, Johnson R., Madden, Rose, Tochtrop, Carroll, Coleman, Frangas, Garcia, Jahn, McFadyen, McGihon, Merrifield, Paccione, Ragsdale, Stafford, Vigil, Williams T., Young, Crane, Miller, and Weddig;
also SENATOR(S) Hillman, and Isgar.

AN ACT

CONCERNING AN EXPANSION OF THE PERIOD DURING WHICH AN INTERRUPTIBLE WATER SUPPLY AGREEMENT MAY OPERATE, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 37-92-309 (3) (c) and (4), Colorado Revised Statutes, are amended to read:

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

(c) An interruptible water supply agreement approved pursuant to this section shall ~~be operated only~~; NOT BE EXERCISED FOR MORE THAN THREE YEARS IN A TEN-YEAR PERIOD FOR WHICH ONLY A SINGLE APPROVAL IS REQUIRED. THE TEN-YEAR PERIOD SHALL BEGIN WITH THE GRANTING OF SUCH APPROVAL. A WATER RIGHT SUBJECT TO THE AGREEMENT UNDER THIS SECTION MAY NOT USE SECTION 37-92-308 (5). AN INTERRUPTIBLE WATER SUPPLY AGREEMENT APPROVED PURSUANT TO THIS SUBSECTION (3) SHALL NOT BE APPROVED FOR ANOTHER TEN-YEAR PERIOD; EXCEPT THAT, IF SUCH AGREEMENT HAS NOT BEEN EXERCISED DURING THE TERM OF THE AGREEMENT, AN APPLICANT MAY REAPPLY ONE TIME BY REPEATING THE APPLICATION PROCESS PURSUANT TO THIS SUBSECTION (3).

~~(f) During the calendar year in which a drought or other emergency is declared by~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

the governor pursuant to section 24-32-2104, C.R.S., in the county of origin or use;
and

~~(H) During the first full calendar year after the calendar year during which the emergency declared pursuant to subparagraph (I) of this paragraph (c) terminates.~~

(4) (a) When the state engineer approves or denies an interruptible water supply agreement, the state engineer shall serve a copy of the decision upon all parties to the application by first-class mail or, if such parties have so elected, by electronic mail. Neither the approval nor the denial of the agreement by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the interruptible water supply agreement. Any appeal of a decision made by the state engineer concerning the operation of an interruptible water supply agreement pursuant to this section shall be expedited, shall be limited to the issue of injury, and shall be made within thirty days AFTER MAILING OF THE DECISION to the water judge in the applicable water division. All parties to the appeal shall pay to the water clerk a fee to cover the direct costs associated with the expedited appeal. The water judge shall hear and determine such appeal using the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of matters rereferred to the water judge by the referee; except that the water judge shall not deem any failure to appeal all or any part of the decision of the state engineer or failure to state any grounds for appeal to preclude any party from raising any claims of injury in a future proceeding before the water judge. The proponent of the interruptible water supply agreement shall be deemed to be the applicant for purposes of application of such procedures and standards. Moneys from such fee shall be transmitted to the state treasurer and deposited in the water adjudication cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate moneys in the fund for the judicial department's expedited adjudications pursuant to this section.

(b) A PARTY TO THE ORIGINAL APPLICATION MAY FILE COMMENTS CONCERNING POTENTIAL INJURY TO SUCH PARTY'S WATER RIGHTS OR DECREED CONDITIONAL WATER RIGHTS DUE TO THE OPERATION OF THE INTERRUPTIBLE WATER SUPPLY AGREEMENT WITH THE STATE ENGINEER BY JANUARY 1 OF THE YEAR FOLLOWING THE FIRST YEAR THAT THE INTERRUPTIBLE WATER SUPPLY AGREEMENT HAS BEEN EXERCISED. THE PROCEDURES OF SUBSECTION (3) OF THIS SECTION REGARDING NOTICE, OPPORTUNITY TO COMMENT, AND THE STATE ENGINEER'S DECISION, AND THE PROCEDURES OF THIS SUBSECTION (4) REGARDING AN APPEAL OF SUCH DECISION SHALL AGAIN BE FOLLOWED WITH REGARD TO SUCH PARTY'S COMMENTS.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the judicial department, for the fiscal year beginning July 1, 2004, the sum of ten thousand dollars (\$10,000), or so much thereof as may be necessary, for the implementation of this act. Said sum shall be cash funds from the water adjudication cash fund created pursuant to section 37-92-309 (4), Colorado Revised Statutes.

SECTION 3. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution (August 4, 2004,

if adjournment sine die is on May 5, 2004); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to interruptible water supply agreements entered into on or after the applicable effective date of this act.

Approved: May 28, 2004