

CHAPTER 415

WATER AND IRRIGATION

HOUSE BILL 13-1130

BY REPRESENTATIVE(S) Sonnenberg and Fischer, Coram, Labuda, Lebsock, Rosenthal, Ryden, Schafer, Young, Duran, Ginal, Levy, Vigil;
also SENATOR(S) Todd and Baumgardner.

AN ACT**CONCERNING EXTENDED OPERATION OF INTERRUPTIBLE WATER SUPPLY AGREEMENTS.**

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

SECTION 1. In Colorado Revised Statutes, 37-92-309, **amend** (2) and (3) (c); and **add** (6) as follows:

37-92-309. Interruptible water supply agreements - special review procedures - rules - water adjudication cash fund - legislative declaration.

(2) For purposes of this section:

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

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

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

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

(3) The state engineer is authorized to approve and administer interruptible water

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

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 not~~ CANNOT 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~~ BEGINS with the granting of ~~such~~ THE approval. A water right subject to the agreement under this section ~~may not~~ CANNOT use section 37-92-308 (5). THE STATE ENGINEER SHALL NOT APPROVE an interruptible water supply agreement approved pursuant to this subsection (3) ~~shall not be approved~~ for another ten-year period; except:

(I) ~~that~~, If ~~such~~ THE 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); AND

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

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

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

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

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

(I) SUBMIT TO THE WATER CLERK IN EACH WATER DIVISION IN WHICH A LOANED WATER RIGHT IS LOCATED A RESUME OF THE APPLICATION FOR APPROVAL OF AN INTERRUPTIBLE WATER SUPPLY AGREEMENT SUBMITTED TO THE STATE ENGINEER, AND THE WATER CLERK SHALL PUBLISH THE RESUMES IN THE MANNER SET FORTH IN SECTION 37-92-302 (3) (a) AND (3) (b), NOTWITHSTANDING THE FACT THAT THE APPLICATIONS WERE FILED WITH THE STATE ENGINEER;

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

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

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

(e) THE STATE ENGINEER SHALL NOT APPROVE AN APPLICATION FOR SUBSEQUENT APPROVAL THAT WOULD TRANSFER OR FACILITATE THE TRANSFER OF WATER ACROSS THE CONTINENTAL DIVIDE BY DIRECT DIVERSION, EXCHANGE, OR OTHERWISE.

(f) THE STATE ENGINEER MAY APPROVE A SUBSEQUENT APPLICATION FOR INTERRUPTIBLE WATER SUPPLY AGREEMENT UNDER THIS SUBSECTION (6) ONLY:

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

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

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

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

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

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

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

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

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

Approved: June 5, 2013