

CHAPTER 4

WATER AND IRRIGATION

SENATE BILL 14-026

BY SENATOR(S) Hodge, Brophy, Jones, Roberts, Schwartz, Guzman, Tochtrop, Ulibarri;
 also REPRESENTATIVE(S) Vigil, Coram, Fischer, Mitsch Bush, Sonnenberg, Becker, Fields, Garcia, Ginal, Hamner, Lebsack,
 Moreno, Rosenthal, Salazar, Schafer, Williams, Young.

AN ACT

**CONCERNING THE REMOVAL OF CERTAIN STATUTORY PRINTING REQUIREMENTS FOR INFORMATION
 PROVIDED BY THE DIVISION OF WATER RESOURCES.**

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

SECTION 1. In Colorado Revised Statutes, **amend** 37-87-114.4 as follows:

37-87-114.4. Annual report. The state engineer shall submit an annual report to the general assembly by November 1 of each year concerning the activities of the state engineer and the division of water resources relating to sections 37-87-105 to 37-87-114 for the preceding fiscal year. ~~In addition to the copies required to be filed as provided in section 24-1-136 (9), C.R.S., a copy of such report shall be provided to each of the following: The governor and the chairmen of the committees of reference of the senate and the house of representatives dealing with agriculture and natural resources. Such~~ THE report ~~shall~~ **MUST** include ~~but not be limited to~~ information on the following: Approvals of plans and specifications for construction of dams and reservoirs and for alterations, modifications, repairs, and enlargements; number of safety inspections made and the results thereof; use of appropriated funds; receipts generated for inspections of dams and reservoirs; rules and regulations adopted or amended; enforcement orders and proceedings; dam failures and reasons therefor; and other available data regarding the effectiveness of the state's dam and reservoir safety program.

SECTION 2. In Colorado Revised Statutes, 37-92-401, **amend** (1) (a), (1) (a.5), (2) (a), (3), and (4) (c) as follows:

37-92-401. Tabulations of priorities and decennial abandonment lists.
 (1) (a) ~~No later than July 1, 1988, and each fourth anniversary thereafter, The~~

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

division engineer of each division with the approval of the state engineer shall ~~prepare~~ MAINTAIN a ~~quadrennial~~ tabulation in order of seniority of all decreed water rights and conditional water rights in his OR HER division. ~~except that a tabulation shall be prepared no later than July 1, 1994, and July 1 of every second year thereafter. Such biennial~~ THE tabulations shall MUST describe each water right and conditional water right by some appropriate means and shall MUST set forth the priority and amount thereof as established by court decrees. In making ~~such biennial~~ THE tabulations, the division engineer may use such system of numbering and listing water rights and conditional water rights in order of seniority as is suited to the administrative needs of the particular division or portion thereof. ~~He shall prepare separate priority lists so that only those water rights and conditional water rights which take or will take water from the same source and are in a position to affect one another will be on the same priority list. He OR SHE shall also prepare decennially, no later than July 1, 1990, and each tenth anniversary thereafter, a separate abandonment list comprising all absolute water rights which THAT he OR SHE has determined to have been abandoned in whole or in part and which THAT previously have not been adjudged to have been abandoned.~~

(a.5) ~~The biennial~~ IN PREPARING THE tabulations required by this section, ~~shall reflect~~ THE DIVISION ENGINEER SHALL INCLUDE judgments and decrees determining, changing, or otherwise affecting water rights and conditional water rights, which judgments and decrees have been entered ~~subsequent to those reflected in the immediately preceding tabulation authorized, as the case may be, by this section or by section 37-92-402~~ MORE THAN SIX MONTHS BEFORE THE DATE OF REVIEW. The ~~biennial~~ DIVISION ENGINEER MUST ALSO INCLUDE IN THE tabulations, ~~shall also reflect, as appropriate, any changes in earlier abandonment lists as have been ordered by THAT the water judge or by the supreme court~~ Except as specified in this paragraph (a.5), the ~~biennial~~ tabulations shall make no changes in the listings from those reflected in the respective immediately preceding tabulation authorized, as the case may be, by this section or by section 37-92-402, other than changes to correct clerical errors HAVE ORDERED.

(2) (a) ~~No later than August 31, 1988, and every second anniversary thereafter, the water clerk, in cooperation with the division engineer, shall cause notice of the availability of the biennial tabulation to be included in the resume described in section 37-92-302 (3) of cases filed in the respective water divisions during the month of July. In addition, the water clerk shall cause such publication of the notice as is necessary to obtain general circulation once in each county or portion thereof in the division. A~~ THE STATE ENGINEER AND THE RESPECTIVE DIVISION ENGINEER SHALL MAKE A COPY OF ~~such biennial~~ THE tabulation shall be available for inspection in the THEIR offices of the state and respective division engineers and the respective ~~water commissioners and water clerks~~ at any time during regular office hours, AS WELL AS ON THE STATE ENGINEER'S WEB SITE, and shall ~~be~~ MAKE THE TABULATION available for purchase ~~from the office of the state engineer and respective division engineer by any person specifically requesting same upon the payment of~~ FOR a fee of ten dollars.

(3) ~~Not later than July 1, 1989, and every second anniversary thereafter, Any person wishing to object to the manner in which a water right or conditional water right is listed in the biennial tabulation or to the omission of a water right or conditional water right from such biennial~~ THE tabulation, and not later than July 1,

1991, and every tenth anniversary thereafter, any person wishing to object to the inclusion of any absolute water right or portion thereof in the decennial abandonment list ~~shall~~ MUST file a statement of objection in writing with the division engineer. ~~A fee of ten dollars shall be paid with such filing; except that no fee shall be required for any such filing to correct any clerical error.~~

(4) (c) The DIVISION ENGINEER SHALL FILE THE decennial abandonment list, together with any revisions, signed by the division engineer and the state engineer or his OR HER duly authorized deputy, ~~shall be filed~~ with the water clerk as promptly as possible, but not later than December 31, 1991, and every tenth anniversary thereafter. EACH RESPECTIVE DIVISION ENGINEER, WATER CLERK, AND THE STATE ENGINEER SHALL MAKE a copy of ~~such~~ THE decennial abandonment list, together with any revisions, ~~shall be available in the office of each respective division engineer and the offices of each water commissioner, the state engineer, and the respective water clerk~~ AVAILABLE for inspection IN THEIR OFFICES at any time during regular office hours, AS WELL AS ON THE STATE ENGINEER'S WEB SITE, and the division engineer shall furnish or mail a copy to anyone requesting ~~same~~ A COPY upon payment of a fee ~~of ten dollars~~ IN AN AMOUNT SET IN SECTION 37-80-110 (1) (h).

SECTION 3. In Colorado Revised Statutes, 37-92-308, **amend** (4) (c), (5) (c), (6), and (10) (d) as follows:

37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration - repeal. (4) (c) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the pending water court application BY ELECTRONIC MAIL, OR, IF A PARTY HAS ELECTED, by first-class mail. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in the pending water court case or any other legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (4) shall be to the water judge of the applicable water division within thirty days and shall be consolidated with the application for approval of the plan for augmentation.

(5) (c) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the application BY ELECTRONIC MAIL, OR IF A PARTY HAS ELECTED, by first-class mail. ~~or, if such parties have so elected, by electronic mail.~~ Neither the approval nor the denial 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 substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (5) shall be made to the water judge in the applicable water division within thirty days, who shall hear such appeal on an expedited basis.

(6) The state engineer shall establish a substitute water supply plan notification list for each water division for the purposes of notifying interested parties pursuant to subparagraph (II) of paragraph (b) of subsection (3) of this section and subparagraph (II) of paragraph (a) of subsection (5) of this section. Beginning in

July 2002, and in January of each year thereafter, in order to establish ~~such~~ THE notification list, the water clerks in each division shall include in the water court resume an invitation to be included on ~~such~~ THE notification list for the applicable water division. Persons on the substitute water supply plan notification list shall receive notice of all substitute water supply plans filed in that water division pursuant to subsections (3) and (5) of this section by ~~either~~ ELECTRONIC MAIL OR, IF A PERSON HAS ELECTED, BY first-class mail. ~~or, if a person so requests, by electronic mail.~~ Persons may be required to pay a fee, not to exceed twelve dollars per year, to be placed on the notification list.

(10) (d) When the state engineer approves or denies a substitute water supply plan pursuant to this subsection (10), the state engineer shall serve a copy of the decision on all parties who have subscribed to the substitute water supply plan notification list for water division 1 and all parties to the water court case in which the plan for augmentation was decreed by ELECTRONIC MAIL OR, IF A PARTY HAS ELECTED, BY first-class mail. ~~or, if such parties have so elected, by electronic mail.~~ Neither the approval nor the denial by the state engineer ~~shall create~~ CREATES any presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES as a defense in any legal action involving the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan approved or denied pursuant to this subsection (10) ~~shall~~ MUST be made within thirty-five days after the date of service of the decision. Any ~~such~~ appeal shall be filed under the same case number as the decreed plan for augmentation and ~~shall~~ MUST be heard under the retained jurisdiction of the water judge, using the procedures and standards set forth in sections 37-92-304 and 37-92-305, for determination of matters referred to the water judge by the referee. The water judge shall hear and determine any ~~such~~ appeal on an expedited basis. The applicant for the substitute water supply plan shall not use the proposed substitute water supply in the decreed plan for augmentation until any appeal under this paragraph (d) is decided by the water court. Following the determination on appeal by the water court, the applicant's use of water under the substitute water supply plan shall be governed by ~~such~~ THE water court determination, unless the terms of the augmentation plan decree provide otherwise.

SECTION 4. In Colorado Revised Statutes, 37-92-309, **amend** (4) (a) as follows:

37-92-309. Interruptible water supply agreements - special review procedures - rules - water adjudication cash fund - legislative declaration - definitions. (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 ELECTRONIC MAIL OR, IF A PARTY HAS ELECTED, 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~~ CREATES any presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES 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~~ MUST be expedited, ~~shall be~~ limited to the issue of injury, and ~~shall be~~ made within thirty-five 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~~ THE 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~~ IS deemed to be the applicant for purposes of application of such procedures and standards. Moneys from ~~such~~ THE 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.

SECTION 5. Act subject to petition - effective date. 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 6, 2014, if adjournment sine die is on May 7, 2014); 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.

Approved: February 19, 2014